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COMPREHENSIVE TRADE POLICY REFORM ACT OF 1986

MAY 6, 1986.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4750]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4750) to reform the trade laws; and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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BACKGROUND AND PURPOSE

The Comprehensive Trade Policy Reform Act of 1986 contains a fundamental restructuring of American trade policy to respond to the disastrous decline in the nation's balance of trade and international competitiveness. During the past four years, the United States has accumulated a total merchandise trade deficit of almost $400 billion. The trade deficit nearly quadrupled between 1982 and 1985. Our current account balance deteriorated from a $6 billion surplus in 1981 to a nearly $110 billion deficit in 1985. The United States has now become a net debtor nation for the first time since World War I, and if present trends continue our net external debt will exceed $500 billion by 1990.

CHANGES IN THE WORLD ECONOMY

These facts are now well known by most in economic policymaking circles. There has, however, been considerable debate over the causes of this chaotic situation and the long-range consequences for United States competitiveness and the U.S. economy in general. The Committee believes that a careful examination of the causes and consequences of these developments leads to a single, irrefutable conclusion; the nation's present policies for managing our foreign trade and maintaining the competitiveness of our industries are fundamentally ill-equipped to handle the changing dynamics of the world economy. Structural imbalances in the trading system are causing the most extreme tensions since World War II, both internationally and within broad sectors of our own society. The very manner in which most nations conduct their trade policies has changed dramatically in the past two decades. Powerful new economies are emerging throughout the world with aggressive government assistance to promote their goods on world markets. This reliance on mercantilist economic philosophies, aided by greater access to new technologies, has turned many nations into oversight trading powers.

The major difference between today's global economy and that which prevailed in the early years of the GATT trading system is that new forms of government practices and policies once unfamiliar to the United States are now commonly accepted. Today, an increasing number of governments believe that the road to economic success leads not through the free market, but through a new form of mercantilism which includes: systematic denial of reciprocal market access; government-led development of new technological and industrial capacity; and encouragement of trade surpluses through subsidization of exports and restriction of imports.

THE U.S. RESPONSE—INADEQUATE AND ROOTED IN THE PAST

Throughout these changing times, the United States has clung to a fundamental belief in the post-war trading order and the benevolent policies more suited to an earlier era. Our government has found it distasteful to reorient itself toward tougher negotiating positions and better management of our trade problems. The inability of the United States during the past four years to control the disastrous appreciation of the dollar or to promote adjustment in industries swamped by foreign competition are but two symptoms of the basic deficiencies in our policymaking apparatus.

The Committee recognizes that the growth in our trade deficit is not merely attributable to unfair trade practices in their narrowest sense nor to inequities among respective nations' trade policies. The appreciation of the dollar resulting from basic mistakes in fiscal policies, the world debt crisis, and the stagnation of many economies relative to the United States during this period all played major roles. But the fact is that world markets have been lost, domestic market shares have declined, America's share of world industrial and agricultural production has plummeted, and yet we have no concerted set of policies or initiatives to deal with this realignment of U.S. economic power. We assume that it is temporary, that it will change when the dollar drops or other favorable developments occur. In fact, many of these conditions are unlikely to change absent affirmative steps by the United States.

Many of the necessary changes must be the subject of other legislation drawn by other Committees. Reduction of budget deficits, promotion of exchange rate stability, stimulation of exports, and assistance to debtor nations through mechanisms to promote financial stability, are all vital. The Committee supports the work of other Committees responsible for managing such legislation, and appreciates the efforts of the House leadership to consolidate these separate actions into one comprehensive piece of legislation.

However, a central element of our current problem is the lack of a coherent strategy to address flaws in the trading system. Within the Executive branch, there are conflicts among various agencies that go unresolved. No single voice speaks for U.S. trade policy—either to Congress or to our trading partners. Trade negotiations are conducted on an ad hoc basis in response to pressures which are more political than commercial in nature. Importing interests have developed an entire industry in exploiting deficiencies in U.S. trade laws, their efforts aided by a weakened and poorly managed Customs Service. Import relief laws have been used only sparingly, and our unfair trade laws have been interpreted as narrowly as possible, making these mechanisms virtually unseless in resolving trade disputes. While the Committee acknowledges recent efforts by this Administration to address some of these problems through tougher bilateral actions, these responses came only after enormous political pressures had developed and are relatively minor in relation to the overall problem. They do not demonstrate a systematic approach to the new realities of the world trading system.

At the same time that our competitors are taking steps to strengthen their industrial and agricultural growth, the United States allows "world market conditions" to dictate the configuration of these sectors of our economy. The result: we fail to recognize or deal realistically with the effects of global economic change. Manufacturing jobs are being lost; a total decline of over 1.7 million since 1981. The depression in our farm economy is staggering; roughly half a million farm foreclosures since 1981. Unemployment in key industrial areas remains unacceptably high, with no real offsetting policies to promote stable adjustment. Our workers and communities are being asked to pay the costs of changes brought upon them by world competition, while the Federal Government does little to control those changes.

The ultimate result of these deficiencies has been an unending torrent of legislation sought by nearly every sector of American business, including agricultural interests, to obtain relief from imports or to force some form of action against foreign trade barriers. In the past three years, the Committee has been inundated with such bills, and they now number in the hundreds rather than the teens as was formerly the case.

The Committee has generally resisted these pressures for sectoral protectionism wherever possible. In some cases it has approved such legislation with great reluctance.

There is now a diminished consensus for traditional U.S. free trade policies within the American business community and among the general public. The pressures on Congress described above are symptomatic of this fact. This is a direct result of perceived inadequacies in our ability to deal squarely with the new mercantilism or to recognize the implications of living in a world economy. In order to restore confidence, Congress must reassert the fundamental precepts of policies articulated in trade legislation since the Reciprocal Trade Agreements Act of 1933: fair trade rules based on market principles; reciprocal access enforced through bilateral and multilateral agreements; promotion of U.S. competitiveness; and protection of U.S. industries and workers from rapid changes in their terms of trade.

The Purpose of H.R. 4750

The Comprehensive Trade Policy Reform Act seeks to modernize U.S. trade policy to deal in a generic manner with the multitude of problems cited above. Its basic purposes: to address growing areas of government intervention such as foreign industrial targeting; to toughen U.S. responses to foreign trade barriers that violate trade agreements; to promote, through tough negotiations, foreign market access for highly competitive elements of our economy—such as telecommunications and intellectual property—in cases where our trading partners do not maintain the same fundamental fairness and openness as does the United States; to reduce the excessive bilateral trade surpluses of countries that rely on systematic unfair trade policies; to regulate new forms of injurious dumping and subsidies; to promote adjustment in connection with import relief through the development of business-labor-government adjustment plans; to set forth negotiating objectives and authority which will enable us to fight for a strengthening of international trading rules; and to end the chaos in U.S. trade policymaking by creating a single, central voice for coordinating and administering such policies—the United States Trade Representative.

Why H.R. 4750 Is Necessary

Some might question whether it is really essential to restructure our basic trade policies at a time when general economic conditions seem favorable. It is true that real economic growth during 1985 and the first quarter of 1986 has averaged 2.7 percent, and that interest rates and inflation are down. However, these positive signs belie a clear and present danger confronting this country. Huge budget deficits and the accumulation of a large foreign debt will eventually lead to serious problems and unwelcome choices. The larger that foreign debt becomes, the more difficult will be the task for the United States to repay it through future trade surpluses. A $500 billion debt by 1990 (which the Federal Reserve Bank of New York has indicated is a very likely occurrence) means that the United States will have to maintain a trade surplus of about $40 billion simply to pay the interest on our foreign debt and avoid a further worsening of our current account deficit.

Yet the weakening of our industrial and agricultural sectors relative to world-wide competition will make it increasingly difficult to obtain such favorable terms of trade and may in fact make it impossible to generate a trade surplus without our resorting to wholesale protectionism. Many of the markets already lost to U.S. firms will be jealously protected by our foreign competitors—protected, if necessary, with the help of government resources. Most of our trading partners are now accustomed to running large and persistent trade surpluses with the United States, and they may invoke extreme measures to protect that advantage even in the face of a weakened dollar. Many will resort to further government subsidies, greater home-market protection, exchange rate manipulation, and other trade distorting practices to defend their national economic interests. Unless the Congress forces negotiations and actions utilizing the natural leverage of our massive internal markets, our economic weaknesses will eventually become so endemic as to make such negotiations more difficult and less successful.

Conclusion

H.R. 4750 is necessary because current national policy is ill-equipped to bring about changes in our trade relations. Our trade policies are weak, a fact well understood and even relied upon by our trading partners. We still trade commercial advantages for military or foreign policy objectives, even where it is clear that such actions weaken us badly. The Administration's interpretation of the trade laws shows a slavish devotion to rules of the GATT which few of our trading partners take as seriously.

The Committee is aware that some provisions of the bill will be criticized for going beyond the scope of international understandings. These criticisms, however, ignore the basic dilemma confronting us in international trade: our competitiveness is being undermined by policies and practices which the rules of GATT and other agreements do not adequately discipline. The United States must play a leadership role in revising and strengthening international trade rules so that they can truly govern the conduct of free trade. Today, however, we must demonstrate to our trading partners that we will protect our national economic interests until such discipline exists.

Ultimately, the trade policy of this country should be designed to ensure economic prosperity, to guarantee a stable industrial and agricultural base, to promote a competitive world economy in which American workers and firms have fair opportunities to compete. The Committee believes that H.R. 4750 furthers those goals in a manner consistent with the principles of free and open trade. This legislation is a recognition of the fact that our Federal government bears an obligation to protect the rights of its industries and workers in a highly mercantilist world economy. That obligation cannot be discharged by ignoring the difficult decisions. It must be met through strong, assertive actions which will guarantee fair and reciprocal trade around the world.

SUMMARY OF H.R. 4750, THE COMPREHENSIVE TRADE POLICY REFORM ACT OF 1986

H.R. 4750 as ordered reported by the Committee on Ways and Means consists of three titles: Title I contains extensive amendments to U.S. trade laws and includes negotiating authority and objectives for a new round of trade negotiations; Title II includes over 60 miscellaneous trade and tariff issues covering duty suspensions, duty-free measures, classification changes and customs related non-tariff matters; Title III provides for the implementation of the Nairobi Protocol to the Florence Agreement.

TITLE I—TRADE LAW AMENDMENTS

Subtitle A—Enforcement of U.S. Trade Agreement Rights and Responses to Foreign Trade Practices

Chapter 1—Amendments to the Trade Act of 1974

SECTION 111. REFERENCES TO THE TRADE ACT OF 1974

Section 111 provides that, unless otherwise specified, all references in this chapter are to the Trade Act of 1974.

SECTION 112. DETERMINATIONS REQUIRING ACTIONS

Section 112 required that in cases involving foreign violations of trade agreements or other "unjustifiable" practices, the President must retaliate in an amount equivalent in value to, and necessary to eliminate fully, the foreign burden or restriction (the form of retaliation would be at his discretion). The President is also required to report to Congress on each action. No retaliation would be required however, if:

(1) The GATT determines the practice is not a violation of U.S. rights or does not deny trade agreement benefits.

(2) The foreign government has agreed to eliminate or phase-out the practice or has agreed to eliminate or phase-out the practice or has agreed to a satisfactory imminent solution of the burden or restriction of U.S. commerce.

(3) If neither of the above can be achieved, the foreign country has agreed to provide satisfactory full compensatory trade benefits.

(4) The President determines such action is not in the national economic interest, because economic interests would be more adversely affected it action were taken than if not, and he reports the reasons to the Congress.

This section also adds specific authority to remove or deny duty-free treatment under the Generalized System of Preferences (GSP) with respect to a country or on certain products as a section 301 action. Further, it amends the definition of "unreasonable" acts, policies, or practices actionable under section 301 to include:

(1) The denial of internationally-recognized worker rights; and

(2) Toleration of cartels.

With respect to cases involving "unreasonable" or "discriminatory practices" which do not violate U.S. rights, the President would retain discretionary authority to retaliate.

Finally, section 112 requires the President to take into account the likely impact on agricultural exports of imposing section 301 import restrictions.

SECTION 113. EXPORT TARGETING

Section 113 provides a discipline for injurious export targeting. Section 301 would specifically apply to cases where imports or sales in the United States subject to export targeting cause, or threaten to cause, material injury to the domestic industry. The USTR is required to determine whether export targeting exists and the ITC must make an injury determination and report its finding to USTR, both within 6 months after the investigation is initiated.

Presidential action is mandatory in cases of injurious export targeting, but the President has discretion as to the form of action that must be taken to eliminate the policy or practice, and/or to fully offset the injurious effects of such targeting. Actions could include—(1) retaliation in an amount equivalent in value and necessary to eliminate fully the burden or restriction; (2) agreements by the foreign country to solve the burden or restriction or to provide compensatory trade benefits; (3) administrative actions or proposed legislation to restore or improve the industry's international competitive position; and (4) a combination of these actions. Action must reflect, to the extent possible, the full benefit level of the targeting policy or practice over the period it has an effect.

SECTION 114. INVESTIGATORY PROCEDURES

Section 114 adds investigation procedures relating to the obtaining and use of information from foreign countries. It also provides for consultations with affected domestic interests (firm, worker, consumer, export) prior to foreign consultations and dispute settlement and prior to recommendations on action, including consultations with industry and labor about action in injurious targeting cases.

SECTION 115. MANDATORY INITIATION OF CERTAIN INVESTIGATIONS BY USTR

Section 115 requires USTR to self-initiate an investigation within 90 days after identifying in the annual trade barrier report a foreign act, policy, or practice which has a significant adverse impact on U.S. exports and which is a likely violation of U.S. rights, if (1) consultations with domestic interests affected determine that section 301 negotiations will likely result in expanded export opportunities for U.S. products; (2) U.S. exports would not suffer significant adverse effects because of displacement in export markets, retaliation, or mirror procedures; and (3) self-initiation is in the U.S. economic interest.

SECTION 116. RECOMMENDATIONS FOR PRESIDENTIAL ACTION BY TRADE REPRESENTATIVE

Section 116 amends section 304 to transfer to USTR from the President the authority to make determinations of whether foreign practices meet section 301 criteria and requires that such determinations be made; the President would retain the authority to decide and implement actions, based on USTR recommendations.

This section also reduces and imposes time limits for action. It requires USTR determinations on whether an act, policy, or practice is actionable under section 301 and recommendations to the President on actions, if any, within a maximum of 9 months, or 11 months in cases of injurious export targeting. This time period may be extended up to 3 months if additional time is needed before foreign consultations to prepare the international case. Further, it requires the President to decide and implement any action within 30 days thereafter (with a possible 3-month extension if substantial progress is being made toward a satisfactory solution or the petitioner requests delay).

SECTION 117. MODIFICATION AND TERMINATION OF ACTIONS

Section 117 would create a new section 307 of the Trade Act adding modification and termination, and compensation authority. It allows modification or termination of section 301 retaliation if the GATT subsequently finds the foreign practice is not illegal, the practice is eliminated, or retaliation is ineffective based on a USTR biennial review and recommendation, after consultation with domestic interests. Section 175 of the Act amends section 123 of the Trade Act to authorize compensation to foreign countries if section 301 retaliation violates GATT.

SECTION 118. BARRIERS TO MARKET ACCESS

Section 118 amends section 181(b)(1) of the Trade Act to require reports provided for therein on foreign trade barriers to be submitted to the Committee on Foreign Affairs as well as the Committee on Ways and Means and to require that such reports identify barriers that had a significant adverse impact on U.S. exports.

SECTION 119. MANDATORY ACTION AGAINST FOREIGN COUNTRIES HAVING EXCESSIVE AND UNWARRANTED TRADE SURPLUSES WITH THE UNITED STATES

Section 119 adds a new section 311 to the Trade Act, Mandatory Negotiations and Actions Regarding Foreign Countries Having Unwarranted Trade Surpluses with the United States. The provision requires an annual ITC determination as to whether any "major U.S. trading partner" maintains an "excessive trade surplus," as defined by the new section. The first determinations would be due 2 months after enactment.

The section requires a USTR determination, within 15 days after the ITC determinations, as to whether any "excessive surplus" country maintains a "pattern of unjustifiable, unreasonable, or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive surplus of that country." This determination would be based on findings and determinations from a variety of sources.

If the USTR's determination is affirmative, the foreign country is placed on a list of countries with "excessive and unwarranted bilateral trade surpluses" and is subject to negotiations and actions aimed at achieving "surplus reduction goals". These goals would be as follows: for 1987—a 10 percent reduction below the 1985 surplus; for 1988—a 10 percent reduction below the 1987 surplus; for each subsequent year through 1990, a further 10 percent reduction. Countries may be removed from the list at any time if they no longer maintain excessive trade surpluses or a pattern of unjustifiable, unreasonable, or discriminatory trade policies.

New section 311 further requires the USTR to negotiate within two months (with a possible two month extension) an agreement with the country concerned which would achieve the surplus reduction goals. If such negotiations are unsuccessful, Presidential action is required. The President may select from a broad range of possible actions which he considers necessary or appropriate to achieve the surplus reduction goals. These actions may include a broad range of trade measures, including suspension of trade agreements, quotas or tariffs, or negotiation of agreements, including orderly marketing agreements. Any such action is subject to the waivers described below.

Finally section 119 allows the President to reduce the surplus reduction goals for a country with balance of payments difficulties and to waive the use of actions if he determines they would cause substantial harm to the U.S. economy. Congress is given 90 days to override any such waivers.

SECTION 120. CONFORMING AMENDMENTS AND EFFECTIVE DATE

Section 120 simply contains conforming amendments and the effective dates for the provisions in chapter 1.

Chapter 2—International Trade in Telecommunications Products and Services

SECTION 121. SHORT TITLE

Section 121 states that the short title is "The Telecommunications Trade Act of 1986."

SECTION 122. FINDINGS AND PURPOSES

Section 122 sets forth a number of findings and purposes with respect to international trade in telecommunications products and services.

SECTION 123. NEGOTIATING OBJECTIVES

Section 123 sets forth six primary and seven secondary negotiating objectives for the purposes of section 124.

SECTION 124. INVESTIGATION OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS

Section 124 requires a USTR investigation of foreign trade barriers to telecommunications exports and a determination within six months as to whether the barriers deny fully competitive foreign market opportunities to U.S. firms. Petitions by interested parties and self-initiation also may prompt an investigation and final determination. The USTR may exclude countries if their market is not substantial. This section also requires the USTR to establish specific primary and secondary negotiating objectives which should be pursued in subsequent negotiations with foreign countries identified during the USTR's investigation. It also requires reports to Congress.

SECTION 125. ACTION BY THE PRESIDENT IN RESPONSE TO INVESTIGATIONS BY TRADE REPRESENTATIVE

Section 125 requires the President to negotiate with countries identified under section 124 for the purpose of entering into agreements which achieve the objectives laid out by the USTR under section 124. If an agreement is not reached, the President is required to take certain countermeasures within a time certain (from 18 months to 3½ years, depending upon subsequent Presidential decisions and Congressional action) in order to achieve the objectives. He is given a broad selection of options for such action.

SECTION 126. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE

Section 126 provides that if, on the basis of annual reviews, the USTR determines that a country is not in compliance with its telecommunications agreement or otherwise denies fully competitive market opportunities under the agreement, the USTR must take action to offset the violation and restore the balance of concessions.

SECTION 127. CONSULTATIONS

Section 127 sets forth requirements for consultation by the President and the USTR with Congress, the private sector, and various departments and agencies.

SECTION 128. GENERAL TRADE AGREEMENT AUTHORITY

Section 128 provides the President with 3½ year negotiating authority subject to "fast-track" Congressional implementation of agreements.

SECTION 129. COMPENSATION AUTHORITY

Section 129 provides compensation authority in the event that retaliatory actions taken by the President or the USTR are found to be GATT-illegal.

SECTION 130. DEFINITION OF TELECOMMUNICATIONS PRODUCT

Section 130 defines telecommunications products in terms of tariff schedule (TSUS) numbers.

SECTION 131. INTERNATIONAL OBLIGATIONS

Section 131 specifies that nothing in the Act shall be construed to require action inconsistent with U.S. international obligations.

Subtitle B—Relief From Injury Caused by Import Competition, Subsidies, Dumping, and Other Unfair Trade Practices

Chapter 1—Relief From Injury by Import Competition

SECTION 141. IMPORT RELIEF

Section 141 amends Chapter 1 of Title II of the Trade Act (commonly referred to as section 201) in a number of important respects. It transfers the ultimate decisionmaking authority under section 201 from the President to the USTR. It also provides for preparation of an industry adjustment plan by an adjustment advisory group. Upon the request of a petitioner, an industry adjustment advisory group, which is composed of representatives of labor, management, consumers, communities, and appropriate Federal Government officials is appointed by USTR to consider and submit an adjustment plan for the industry as a whole. Such plan should set forth an assessment of the problems facing the industry and a strategy for enhancing its long-term international competitiveness. The plan is to be submitted to the ITC within 120 days of the intiation of the investigation.

If a plan is submitted to the ITC, and the ITC finds serious injury, it is required to take the plan into account in determining the appropriate remedy for the injury. In determining whether to provide import relief, the USTR must take into account any adjustment plan submitted by the advisory group, and may condition the provision of import relief on compliance with such elements of the plan as the USTR deems appropriate.

The USTR is also authorized to obtain confidential information from firms and unions in the domestic industry to ascertain how they plan to implement the adjustment plan. The failure to submit a plan, or the failure to request the establishment of an advisory group, may not be factor in any determination by ITC or USTR.

The amended version of section 201 also authorizes temporary emergency import relief for perishable products if the Secretary of Agriculture determines within 20 days that such relief is warranted, and such determination is not overridden by the USTR, and authorizes provisional import relief (suspension of liquidation and retroactivity of any relief granted by USTR) if critical circumstances exist.

Other provisions require (1) the ITC, in its report to USTR, to estimate the effect of the recommended relief on consumers and on domestic competition; (2) the USTR to consider, among other factors, the impact of import relief on U.S. agricultural exports in determining whether, and to what extent, to provide import relief; (3) the ITC to report annually, beginning the second year of import relief, on the efforts made by the domestic industry to adjust to import competition; and (4) that revenues collected from duties of auctioning of quotas to be deposited in an Adjustment Assistance Trust Fund, to be used for the trade adjustment assistance program.

SECTION 142. ADJUSTMENT ASSISTANCE TRUST FUND

Section 142 establishes an Adjustment Assistance Trust Fund, for revenues generated by import relief granted under section 201, and by auctioning of import licenses (as authorized under current law). Such revenues will be earmarked for use in the trade adjustment assistance program.

SECTION 143. EXPEDITED CONSIDERATION OF PETITIONS FOR ADJUSTMENT ASSISTANCE

Section 143 provides that an affirmative injury determination by the ITC automatically triggers expedited consideration of petitions for trade adjustment assistance (whether or not USTR ultimately provides import relief) for workers and firms within the injured industry, for a period of three years after the ITC injury determination.

SECTION 144. MARKET DISRUPTION

Section 144 amends section 406 of the Trade Act of 1974 in several respects to allow for consideration of dumping and subsidy practices with respect to products from nonmarket economy countries. It replaces the requirement that imports be increasing "rapidly" with the requirement (currently in section 201) that imports be increasing (either absolutely or relative to domestic production). It lowers the causation test from "significant cause of material injury" to "important cause of material injury." In determining market disruption, the ITC is required to consider a number of factors, including the volume of imports, the effect of imports on U.S. prices, the impact of imports on U.S. producers (all factors currently used in determining material injury) as well as evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns. It requires the ITC to cumulate imports from two or more nonmarket economies subject to investigation where appropriate. Finally, it authorizes a variable tariff remedy, based on a comparison of average domestic producer prices and average import prices.

Chapter 2—Amendments to the Countervailing and Antidumping Duty Laws

SECTON 151. REFERENCE

All references in this chapter, unless otherwise specified, are to the Tariff Act of 1930.

SECTION 152. PROCESSED AGRICULTURAL PRODUCTS

Section 152 provides special factors for the ITC to consider in cases involving imports of processed agricultural products. In defining the domestic industry, ITC would consider whether the processed agricultural product is produced from a raw agricultural product through a single continuous line of production, and whether there is a substantial coincidence of economic interest between the raw product producers and the processed product producers. If the investigation relates to imports of both a raw product and a processed product, then ITC shall consider the likely diversionary effect of duties imposed on one product but not the other.

SECTION 153. DEFINITION OF DOMESTIC SUBSIDY

Section 153 clarifies the list of actionable domestic subsidies to cover the provision of capital, loans, loan guarantees, goods or services at preferential rates or on terms inconsistent with commercial consideration.

SECTION 154. MATERIAL INJURY AND THREAT OF MATERIAL INJURY

Section 154 makes several changes in section 771(7) to the material injury and threat of material injury standards. First of all it requires the ITC, in determining material injury and (to the extent practicable) threat of material injury, to cumulate the impact of imports from two or more countries, if such imports were subject to either countervailing duty or antidumping investigations within the past 12 months.

Further, it provides additional factors for the ITC to consider in determining whether there is a threat of material injury by reason of dumped or subsidized imports: (a) foreign export targeting, (b) diversion of exports to the U.S. market, and (c) repeated dumping in world markets, as evidenced by antidumping findings in other GATT countries. Finally, it clarifies the material injury standard as it applies to fungible goods so that price leadership, price declines in other markets, the fact that producers also import or the fact that producers are profitable cannot be the sole basis for a negative determination.

SECTION 155. RESOURCE INPUT SUBSIDIES

Section 155 amends the definition of subsidy in section 771(5) of the Tariff Act of 1930 by explicitly including "resource input subsidies" among the list of government programs subject to countervailing duties. The bill would clearly establish that a subsidy exists when a government, acting through a controlled or regulated entity, sells an input product or sells or grants the right to remove or extract an input product to domestic industries at a price that is below market value for such input or removal right. The subsidy would only exist if the resource component constitutes a significant portion of the total production costs of the final manufactured product and, for input products, if the controlled domestic price of such input product is not freely available to U.S. producers for export to the United States. The provision would authorize a countervailing duty against the final manufactured product, but only if imports of such product cause or threaten to cause material injury to U.S. producers of the like product.

The subsidy would be measured by the difference between the domestic price for such resource input product or removal right and the fair market value of such product or removal right and the fair maket value would be the price that, in the absence of government regulation or control, a willing buyer would pay a willing seller for that product from that country in an arms-length transaction. To assist the administering authority in calculating the fair market value of input products and removal rights, the legislation provides non-exhaustive lists of factors to be taken into account. Finally, in calculating the domestic price and fair market value of an input product, costs incidental to transportation and handling are excluded.

SECTION 156. DIVERSIONARY DUMPING

Section 156 adds a diversionary dumping provision to the antidumping law, which requires the Department of Commerce, if it determines that diversionary dumping is occurring, to take into account, in determining the foreign market value of the merchandise under investigation, an amount equal to the benefit bestowed on the foreign merchandise from such diversionary dumping. The provision covers any foreign material or component that is dumped into a third country market and then incorporated into a product which is imported into the United States. For diversionary dumping to occur, the material or component must have been the subject of a previous antidumping investigation and either be currently subject to an antidumping duty order or be subject to a termination or suspension agreement. As under present law, this provision would require a finding that the merchandise being imported into the United States—which contains the dumped components—is causing or threatening material injury to a domestic industry.

SECTION 157. DOWNSTREAM MONITORING

Section 157 provides new procedures to monitor the diversionary impact of significant antidumping and countervailing duties on component products on imports of downstream products. Commerce would determine which downstream products are appropriate to be monitored, and ITC would monitor levels of trade in these products and provide quarterly reports.

SECTION 158. PRIVATE REMEDY FOR INJURY RESULTING FROM DUMPING

Section 158 provides injured parties with the right to bring suit in the Court of International Trade for damages for the economic loss sustained by reason of the importation and sale at less than fair value of merchandise which has been the subject of a final dumping order.

SECTION 159. MISCELLANEOUS AMENDMENTS

Section 159 contains several miscellaneous amendments to Title VII relating to antidumping and countervailing duties. Included are provisions which (1) prohibit any U.S. Government purchases of dumped or subsidized merchandise from being exempt from antidumping or countervailing duties; (2) amend procedures for disclosure of confidential information under administrative protective order; (3) prohibit antidumping and countervailing duties paid on imported merchandise from being eligible for refund under drawback provisions; and (4) require submissions from parties involved in an antidumping or countervailing duty proceeding to be certified as to their accuracy.

Chapter 3—Intellectual Property Rights

SECTION 161. CONGRESSIONAL FINDINGS AND PURPOSES

Section 161 sets forth a number of findings and purposes with respect to intellectual property rights.

SECTION 162. PROTECTION UNDER THE TARIFF ACT OF 1930

Section 162 makes a number of changes to improve the effectiveness of intellectual property protection under section 337. Most importantly it eliminates the injury requirement in intellectual property rights cases (the domestic industry requirement is retained with an expanded definition). It also shortens the time period for issuance of temporary exclusion orders to 90 days after initiation (an extension of 60 days is permitted for more complicated cases) and clarifies that cease and desist orders may be issued "in addition to or in lieu" of exclusion orders and increases the penalty for violations of such orders to "$100,000 or the domestic value of the articles."

It also provides for the Commission to use default procedures against persons who have been served with notice of proceedings and fails to appear to answer a complaint in cases where the petitioner seeks relief solely affecting that person.

In cases where a party who has previously found to have been in violation petitions the Commission, the burden of proof that he is no longer in violation is on the petitioner and relief may be granted only on the basis of new evidence or on other grounds permissable under the Federal Rules of Civil Procedure. Other changes include providing procedures for treating confidential information submitted in section 337 cases; explictly authorizing the Commission to issue consent orders as the basis of settlement agreements and allowing the Commission to prescribe sanctions for abuse of discovery and abuse of process in section 337 cases.

SECTION 163. FOREIGN MARKET ACCESS REGARDING INTELLECTUAL PROPERTY

Section 163 creates a mechanism to provide fair and equitable access to foreign markets for products protected by U.S. intellectual property rights whereby the USTR is required to (1) identify "priority foreign countries" that deny fair and equitable market access to such products; (2) negotiate improved market access with such countries and, if unsuccessful within 2 years; (3) take such action as he deems appropriate.

SECTION 164. NEGOTIATING OBJECTIVES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS

Section 164 sets forth principal negotiating objectives for trade agreements to improve foreign protection and enforcement of intellectual property rights.

Subtitle C—Trade Negotiating Objectives and Authority

SECTION 171. REFERENCE TO TRADE ACT OF 1974

Section 171 provides that unless otherwise specified, all references are to the Trade Act of 1974.

SECTION 172. OVERALL AND PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES

Section 172 sets forth both overall and specific U.S. objectives for trade negotiations. It establishes 3 overall objectives—fair and open trade, reciprocity, and GATT reform. It also establishes a number of specific negotiating objectives relating to matters such as—

a. dispute settlements;

b. subsidy rules, including agriculture, resources, upstream inputs, third country export displacement, persistent use of subsidies;

c. internationally-recognized worker rights;

d. dumping rules and procedures, including dumped inputs, expedited procedures, third country market dumping, repetitive dumping;

e. LDC graduation;

f. services;

g. investment;

h. agriculture;

i. MTN code expansion and improvements;

j. import safeguards;

k. countertrade/and offset requirements;

l. specific barriers; and

m. faster implementation and prompter balance of payment action by countries with excessive current account surpluses;

and greater trade-monetary policy and institutional coordination.

The section directs that such objectives are to be achieved through multilateral agreements when feasible, but bilateral or other agreements should be negotiated where more effective or appropriate or if multilateral agreements are not feasible.

SECTION 173. EXTENSION OF TRADE AGREEMENT AUTHORITY

Section 173 extends existing nontariff agreement negotiating authority under section 102, subject to "fast-track" Congressional approval and implementation and extends the President's proclamation authority for tariff agreements under section 101. The President may not proclaim duty reductions exceeding 60 percent unless the duty is 5 percent or below or duty increases exceeding 20 percent ad valorem or 50 percent above column 2 rates. Prenegotiation hearing and advisory procedures and staging requirements apply. Any duty modifications on import-sensitive articles ineligible for GSP must be submitted to Congress for approval under the "fast-track" procedure.

Nontariff and tariff authorities are extended for one year (until January 3, 1989). However, if the USTR submits a report to the Committees on Ways and Means and Finance at least 60 days prior to expiration (i.e., by November 3, 1988) certifying that sufficient progress has been made to justify continuation which is likely to achieve the negotiating objectives, the authorities are automatically extended for two more years, until January 3, 1991.

SECTION 174. AGREEMENTS REGARDING NONTARIFF BARRIERS TO, AND OTHER DISTORTIONS OF TRADE

Section 174 makes several changes in section 102. It links the availability of the "fast-track" procedure for implementing nontariff barrier agreements to Presidential action to request an international monetary conference. It requires a Presidential determination that an agreement achieves the overall and specific negotiating objectives set forth in the bill and a statement explaining what objectives it does or does not achieve. It further requires consultations with Congress and private sector reports on the achievement of objectives.

The section requires the President to recommend application of agreement benefits solely to signatory countries assuming obligations (i.e., conditional MFN) if appropriate and consistent with the agreement.

The section also requires the Commissioner of Customs to promulgate rules and regulations for any bilateral trade agreements to prevent transshipments of products subject to quantitative import restrictions.

SECTION 175. COMPENSATION AUTHORITY

Section 175 adds compensation authority, if required by international obligations, for section 301 actions, import restrictions imposed by legislation, or tariff reclassification.

SECTION 176. TARIFF AGREEMENTS WITH CANADA

Section 176 grants the President 5-year authority to enter into and to proclaim tariff agreements with Canada reducing or eliminating duties on a specific list of tariff items.

SECTION 177. TIME FOR SUBMISSION OF CERTAIN REPORTS

Section 177 amends section 135(e) of the Trade Act to require that reports from the advisory committees must address the extent to which the negotiating objectives have been achieved and to require submission of such reports on the date of submission of the draft implementing bill.

SECTION 178. NEGOTIATING OBJECTIVES REGARDING HIGH TECHNOLOGY ACCESS

Section 178 amends section 104A of the Trade Act to provide specific negotiating objectives to the President concerning access for high-technology products.

Subtitle D—Functions of the United States Trade Representative

SECTION 181. TRADE POLICY FUNCTIONS

Section 181 amends section 141 of the Trade Act to strengthen the role of the U.S. Trade Representative. It specifies that the USTR has primary responsibility for developing and coordinating implementation of international trade policy, international trade negotiations, and trade policy guidance, and is principal trade spokesman; USTR must consult with and be advised by the interagency trade organization. It also specifies the agency membership of the statutory interagency trade organization chaired by USTR to assist the president and to advise the USTR.

SECTION 182. FAIR TRADE ADVOCATES BRANCH

Section 182 establishes a Fair Trade Advocates Branch in the USTR to assist small business and any industry which would suffer reprisals or other serious adverse economic impact by pursuing its own case under section 337 or the countervailing duty or antidumping laws. USTR would assist in preparing cases, act as an advocate in proceedings, and pursue appeals.

SECTION 183. TRADE POLICY AGENDA

Section 183 requires USTR to submit an annual statement to the Committees on Ways and Means and Finance setting forth trade policy objectives and priorities, and actions and legislation to achieve them. USTR is required to consult with the Committees on objectives and their status.

Subtitle E—Miscellaneous Trade Law Provisions

SECTION 191. IMPORTS AFFECTING NATIONAL SECURITY

Section 191 imposes a 3-month time limit for national security investigations by the Secretary of Commerce, with up to a three-month extension possible inextraordinarily complicated cases. It imposes a 30-day time limit, applicable to pending as well as prospective cases, for the President to decide whether to restrict imports that threaten the national security; he must proclaim action with 15 days.

SECTION 192. REALLOCATION OF GSP BENEFITS TO LATIN AMERICAN DEBTOR NATIONS

Section 192 provides for reallocation of GSP benefits to Latin American debtor countries by authorizing the waiver product "competitive need" ceilings under existing authority in certain circumstances.

SECTION 193. TRANSFER OF AUTHORITY UNDER GSP TO THE U.S. TRADE REPRESENTATIVE

Section 193 transfers from the President to the U.S. Trade Representative the authority to make decisions with regard to the GSP program.

SECTION 194. APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN OF UNITED STATES INTERNATIONAL TRADE COMMISSION

Section 194 requires Senate advice and consent on Presidential appointments of the chairman and Vice Chairman of the ITC and removes the prohibition on appointing the two most recently appointed Commissioners serving as Chairman.

SECTION 195. SCOFFLAW PENALTIES FOR MULTIPLE CUSTOMS LAW OFFENDERS

Section 195 creates a scofflaw penalty provision that directs the Secretary of Treasury to prohibit the importation of foreign goods by any person that was either convicted of, or assessed a civil penalty for, three separate violations of one or more customs laws involving gross negligence, fraud or criminal culpability over a seven-year period.

SECTION 196. METALLURGICAL COAL EXPORTS TO JAPAN

Section 196 expresses the sense of the Congress that the objectives of the 1983 Joint Policy Statement on Energy Cooperation as it relates to U.S. exports of metallurgical coal to Japan have not been achieved and urges the President to direct the USTR to negotiate an agreement under which Japan would import U.S. metallurgical coal in quantities equivalent to that used in the production of Japanese steel products exported to the United States.

SECTION 197. STEEL IMPORTS

Section 197 provides specific enforcement authority to prevent circumvention of negotiated quantitative restraints on steel imports.

SECTION 198. IMPORT MONITORING BY THE INTERNATIONAL TRADE COMMISSION, TECHNICAL AMENDMENTS

Section 198 establishes an ITC import monitoring system; allows the ITC not to release business confidential information to the President or the Congress in section 332 investigations without the consent of the affected party; and designates the ITC as an "independent regulatory agency" for purposes of the Paperwork Reduction Act of 1980.

TITLE II—MISCELLANEOUS TARIFF AND CUSTOMS PROVISIONS

Subtitle A—References to Tariff Schedules

Section 201 applies to all other sections of Title II. It states that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, item, headnote or other provision, the reference shall be considered to be made to a schedule, item, headnote, or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

Subtitle B—Permanent Changes in Tariff Treatment

Section 211 contains a provision originally introduced by Mr. Gibbons, H.R. 3019, to amend the Tariff Schedules of the United States to permit the importation of furskins from the Union of Soviet Socialist Republics.

Section 212 contains a provision originally introduced by Mr. Heftel, H.R. 2278, relating to the tariff classification of salted and dried plums, and for other purposes.

Section 213 contains a provision originally introduced by Mr. MacKay, H.R. 2362, to establish equal and equitable classification and duty rates for certain imported citrus products.

Section 214 contains a provision originally introduced by Mr. Cooper, H.R. 2273, to make permanent the free rate of customs duty on imported hatters' fur, and for other purposes.

Section 215 contains a provision originally introduced by Mr. Bonker, H.R. 2324, to amend the Tariff Schedules of the United States to clarify the duty treatment of certain types of plywood.

Section 216 contains a provision originally introduced by Mr. Jenkins, H.R. 2338, to amend schedule 3 of the Tariff Schedules of the United States.

Section 217 contains a provision originally introduced by Mr. Guarini, H.R. 2336, to impose a duty on uranium hexafluoride (UF6) imported from any country that requires the processing of uranium mined in that country into UF6 before export.

Section 218 contains a provision originally introduced by Mr. Vander Jagt, H.R. 2186, relating to the tariff classifications of certain silicone resins and materials.

Section 219 contains a provision originally introduced by Mr. Matsui, H.R. 2396, to change the tariff treatment with respect to naphtha and motor fuel blending stocks.

Section 220 contains a provision originally introduced by Mr. Rostenkowski, H.R. 2349, to amend the Tariff Schedules of the

United States regarding the classification of television apparatus and parts thereof.

Section 221 contains a provision originally introduced by Mr. Quillen, H.R. 2913, to amend the Tariff Schedules of the United States to provide for rates of duty on imported speedometers used on exercise equipment consistent with those on bicycle speedometers.

Section 222 contains a provision originally introduced by Mr. Anthony, H.R. 2029, to amend the Tariff Schedules of the United States in order to eliminate the special marking requirements for imported watches and clocks and components thereof.

Section 223 contains an amendment offered by Mr. Dorgan relating to the tariff treatment of certain casein.

Subtitle C—Temporary Change in Tariff Treatment

Section 231 contains a provision originally introduced by Mr. Duncan, H.R. 2474, to continue the existing suspension of duties on color couplers and coupler intermediates used in the manufacture of photographic sensitized material.

Section 232 contains a provision originally introduced by Mr. Evans of Iowa, H.R. 2332, to suspend the duty on P-sulfobenzoic acid, potassium salt.

Section 233 contains a provision originally introduced by Mr. Rowland of Connecticut, H.R. 2351, to suspend the duty on 2,2'-oxamido bis-[ethyl 3-(3,5-di-tert-butyl-4-hydroxypenyl)propionate].

Section 234 contains a provision originally introduced by Mr. Campbell, H.R. 1265, to suspend temporarily the duty on dicyclohexylbenzothiazolesulfenamide.

Section 235 contains a provision originally introduced by Mr. Jones of Oklahoma, H.R. 1734, to suspend temporarily the duty on 2,4 Dichloro-5-sulfamoyl benzoic acid (also known as lasamid).

Section 236 contains a provision originally introduced by Mr. Rowland of Connecticut, H.R. 2352, to amend the Tariff Schedules of the United States to suspend temporarily the duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide.

Section 237 contains a provision originally introduced by Mr. Roe, H.R. 2693, to provide for the temporary suspension of the duty on mixtures of 1,2-dimethyl 1-3,5-diphenylpryazolium methyl sulfate (difenzoquat methyl sulfate).

Section 238 contains a provision originally introduced by Mr. Schulze, H.R. 2311, to extend duty-free treatment for dicofol after the existing duty reduction for that chemical expires on September 30, 1985.

Section 239 contains a provision originally introduced by Mr. Blaz and Mr. Frenzel, H.R. 2225, relating to the customs treatment of certain wearing apparel produced in the insular possessions of the United States.

Section 240 contains a provision originally introduced by Mr. Schulze, H.R. 2312, to provide for the temporary suspension of the duty on 3,7-Bis(dimethylamino)-phenazathionium chloride (methylene blue) to be used as a process stabilizer in the manufacture of organic chemicals.

Section 241 contains a provision originally introduced by Mr. Evans of Iowa, H.R. 2333, to suspend the duty on 3.5 dinitro-o-toluamide.

Section 242 contains a provision originally introduced by Mr. Broyhill, H.R. 1546, to suspend the duty on secondary butyl chloride.

Section 243 contains a provision originally introduced by Mr. Roe, H.R. 2309, to amend the Tariff Schedules of the United States to provide for the temporary suspension of the duty on nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymer, containing by weight less than 50 percent derivatives of vinyl acetate.

Section 244 contains a provision orginally introduced by Mr. Flippo, H.R. 2360, to suspend temporarily the duty on tungsten ore.

Section 245 contains a provision originally introduced by Mr. Gradison and Mrs. Schneider, H.R. 2335, to suspend temporarily the duty on certain stuffed toy figures.

Section 246 contains a provision originally introduced by Mr. Mrazek, H.R. 2347, to extend duty-free treatment to certain plastic sheeting used as radiation shielding material.

Section 247 contains a provision originally introduced by Mr. Jacobs, H.R. 2723, to permit free entry into the United States of the personal effects, equipment, and other related articles of foreign participants, officials, and other accredited members of delegations involved in the games of the Tenth Pan American Games to be held in Indianapolis, Indiana, in 1987.

Section 248 contains a provision originally introduced by Mr. Manton, H.R. 2306, to suspend the duty on certain specialty yarns used in the manufacture of wigs for dolls.

Section 249 contains a provision originally introduced by Mr. Schulze, H.R. 2310, to suspend the duty on spinning, twisting, doubling, and other machines specially designed for wool.

Section 250 contains a provision originally introduced by Mr. Rostenkowski, H.R. 2350, to suspend the duty on certain bicycle parts and to continue until that date the present treatment of bicycle component parts within foreign trade zones.

Section 251 contains a provision originally introduced by Ms. Oakar, H.R. 4196, to suspend the duty on 1-(3-Sulfopropyl) pyridinium hydroxide.

Section 252 contains a provision originally introduced by Mr. Wirth, H.R. 4283, to suspend temporarily the duty on d-6-Methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt.

Section 253 contains a provision originally introduced by Mr. Shulze, H.R. 4372, to provide for the temporary suspension of the duty on mixtures of 2,4,-dinitro-6-octyl phenyl crotonate, 2,6-dinitro-4-octyl phenyl crotonate and mitrooctyl phenols (dinocap), and on mixtures of dinocap with application adjuvants; H.R. 4374, to provide temporary suspension of the duty on mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants; and H.R. 4377, to provide for the temporary suspension of the duty on mixtures of mancozeb, dinocap, stabilizer and application adjuvants.

Section 254 contains a provision originally introduced by Mr. Schulze, H.R. 4376, to provide for the temporary suspension of the duty on cross-linked polyvinylbenzyltrimethylammonium chloride (cholestryramine resin USP).

Section 255 contains a provision originally introduced by Mr. Schulze, H.R. 4375, to provide for the temporary suspension of the duty on 3-amino-3-methyl-1-butyne.

Section 256 contains a provision originally introduced by Mr. Schulze, H.R. 4373, to provide for the temporary suspension of the duty on mixtures of maneb, zineb, mancozeb, metiram, stabilizer, and application adjuvants.

Section 257 contains an amendment offered by Mr. Duncan regarding nicotine resins.

Section 258 contains an amendment offered by Mr. Duncan to suspend temporarily duties on hosiery knitting needles.

Section 259 contains extensions of certain existing suspensions:

Subsection (1) contains a provision originally introduced by Mrs. Boggs, H.R. 3867, to provide duty-free entry for certain mixtures of hot red peppers and salt.

Subsection (2) contains a provision originally introduced by Mr. de la Garza, H.R. 2075, to make duty free the rate of customs duty on fresh cantaloupes imported at certain times, and for other purposes.

Subsection (3) contains a provision originally introduced by Mr. Frenzel, H.R. 1696, to extend the existing temporary duty-free treatment for certain wools finer than 46s.

Subsection (4) contains a provision originally introduced by Mr. Gibbons, H.R. 2972, to extend the existing duty-free treatment of certain needlecraft display models, and for other purposes.

Subsection (5) contains a provision originally introduced by Mr. Gephardt, H.R. 2300, to extend the existing suspension of duty on triphenyl phosphate.

Subsection (6) contains a provision originally introduced by Mr. Evans of Iowa, H.R. 2228, to extend the existing suspension of duty on sulfapyridine.

Subsection (7) contains a provision originally introduced by Mr. Jenkins, H.R. 3468, to extend the suspension of import duties on synthetic rutile.

Subsection (8) contains a provision originally introduced by Mr. Vander Jagt, H.R. 4298, to extend temporary suspension of duties on certain clock radios.

Subsection (9) contains a provision originally introduced by Mr. Broyhill, H.R. 1849, to extend the existing temporary duty-free treatment of machines designed for heat-set, stretch texturing of continuous man-made fibers.

Subsection (10) contains a provision originally introduced by Mr. Broyhill, H.R. 1547, to extend the existing temporary duty-free treatment of hosiery knitting machines.

Subsection (11) contains a provision originally introduced by Mr. Broyhill, H.R. 2166, to extend the existing temporary duty-free treatment of double-headed latch needles.

Subsection (12) contains a provision originally introduced by Ms. Schneider, H.R. 2238, to extend the existing suspension of duty on stuffed dolls, certain toy figures, and the skins thereof.

Subsection (13) contains a provision originally introduced by Ms. Kaptur, H.R. 1417, to extend the temporary suspension of duty on umbrella frames.

Subsection (14) contains a provision originally introduced by Mr. Jenkins, H.R. 4255, to extend the existing suspension of duty on crude feathers and down.

Subtitle D—Other Customs and Effective Date Provisions

Section 261 contains a provision originally introduced by Mr. Anthony, H.R. 2028, to render watches eligible for preferential treatment.

Section 262 contains a provision originally introduced by Mr. Schulze, H.R. 839, relating to the marking of containers of imported mushrooms.

Section 263 contains a provision originally introduced by Mr. Carr, H.R. 2381, relating to user fees for customs services at certain small airports.

Section 264 contains an amendment offered by Mr. Dorgan relating to customs treatment of ethyl alcohol.

Section 265 contains an amendment offered by Mr. Crane regarding Customs bond cancellation standards.

Section 266 contains a provision originally introduced by Mr. Heftel, H.R. 4254, to provide for the duty-free entry of certain structures and parts for use in the W.M. Keck Observatory Project, Mauna Kea, Hawaii.

Section 267 contains a provision originally introduced by Ms. Mikulski, H.R. 3628, for the relief of Rukert Marine Corporation of Baltimore, Maryland.

Section 268 contains a provision originally introduced by Mr. Lent, H.R. 2506, to provide for waiver of the requirement that proof of actual use be furnished within three years after the date an article is entered, and for reliquidation of certain entries of tubular tin products.

TITLE III—IMPLEMENTATION OF NAIROBI PROTOCOL

Title III contains a provision originally introduced by Mr. Gibbons, H.R. 2885, to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials, and for other purposes.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

TITLE I—TRADE LAW AMENDMENTS

Subtitle A—Enforcement of United States Rights Under Trade Agreements and Response to Certain Foreign Trade Practices

Chapter 1—Amendments to Trade Act of 1974

Chapter 1 of Title III of the Trade Act of 1974 (commonly known as "section 301"), as amended by the Trade Agreements Act of 1979 and the Trade and Tariff Act of 1984, is the basic statutory authority for the President to enforce U.S. rights under trade agreements and to obtain the elimination of foreign government unfair trade practices which burden or restrict U.S. commerce. This statute is not designed or intended to protect or provide relief to domestic industries from injurious import competition. Rather, section 301 is a negotiating tool whose primary purpose is to ensure adherence by countries to their trade agreement obligations of benefit to the United States and to obtain the elimination of other foreign unjustifiable, unreasonable, or discriminatory practices which burden or restrict U.S. commerce. The President may impose retaliatory import measures or take any other actions under his constitutional powers as negotiating leverage to obtain a satisfactory solution or as a last resort as "self-compensation" to enforce U.S. rights.

The provisions include investigatory procedures administered by the U.S. Trade Representative (USTR) which parallel the consultation and dispute settlement procedures of the General Agreement on Tariffs and Trade (GATT), to the extent they are applicable. Section 301 constitutes the counterpart authority under domestic law to enforce U.S. legal rights under international agreements, including the GATT. However, section 301 is a broad, inclusive statute which provides independent authority under domestic law applicable to foreign measures which meet the statutory criteria, irrespective of whether the foreign country is a signatory to, or its practices are covered by, the GATT or other international agreements.

Section 301 is derived from section 252 of the Trade Expansion Act of 1962, which was originally intended to deal with foreign import restrictions and export subsidies, particularly on agricultural commodities. Through successive amendments in 1974, 1979, and 1984, the authority has been expanded to cover all measures covered by trade agreements and all forms of unfair practices by foreign governments which burden or restrict U.S. commerce, including those affecting services trade and investment flows, as well as goods.

Certain standards must be met for alleged unfair foreign trade practices to be actionable under section 301 authority. First, there must be an existing "act, policy, or practice of a foreign country or instrumentality," i.e., the existing practice must be undertaken by a foreign government. Private practices, with no direct or indirect government involvement, are not actionable under section 301.

Second, the offensive measure must violate or otherwise deny U.S. benefits under a trade agreement, or be unjustifiable, unreasonable, or discriminatory and a burden on U.S. commerce, as defined under section 301(e):

> The term "unjustifiable" means any act, policy, or practice which is "in violation of, or inconsistent with, the international legal rights of the United States."
>
> The term "unreasonable" means any act, policy, or practice which is not necessarily in violation of, or inconsistent with, U.S. international legal rights, but is otherwise "unfair and inequitable." In determining what is unreasonable under this definition, the USTR examines how the offensive practice compares to existing U.S. practice and international norms.

The term "discriminatory" includes, where appropriate, any act, policy, or practice which "denies national or most-favored-nation treatment" to U.S. goods, services, or investment.

Third, where the foreign government practice is deemed "unjustifiable, unreasonable, or discriminatory," the practice must also "burden or restrict United States commerce" in order to be actionable under section 301. This "injury" requirement is liberally interpreted and varies from case to case. For example, lost sales due to foreign import restrictions can be sufficient to demonstrate burden even though the U.S. industry's general health is good. In other cases, burden may be demonstrated by decreased profits or other indications of injury. There must also be a causal link between the foreign government practice and the burden or restriction. In cases involving an alleged denial of rights under a trade agreement, section 301 does not require the demonstration of a burden or restriction to commerce. However, depending on the provisions of the trade agreement concerned, some form of injury or burden may have to be demonstrated in order to find that the agreement has been violated.

The amendments made by sections 112 through 118 of this Act address primarily three major issues raised by Members of Congress, particularly in legislation introduced in the 99th Congress, and by private sector interests as areas where changes in section 301 provisions are warranted: (1) the need for greater certainty of Presidential action against unfair foreign trade practices; (2) the need for more timely decisions and actions in meritorious cases; and (3) the need to address specifically additional forms of unfair trade practices through section 301 authority. At the same time, the Committee recognizes that the strength of section 301 derives from the flexibility that it provides in fashioning the appropriate response to each case. The Committee intends to preserve that flexibility, while seeking more vigorous and timely use of this broad authority to ensure enforcement of trade agreements and the elimination of foreign unfair trade practices which adversely impact U.S. trade interests.

SECTION 111. REFERENCE TO TRADE ACT OF 1974

Section 111 states that any amendments or repeals contained in Chapter 1 of titles, sections, subsections, or other provisions refer to provisions of the Trade Act of 1974, unless otherwise specified.

SECTION 112. DETERMINATIONS REQUIRING ACTION

Section 112 of the bill amends sections 301 of make Presidential response more certain against more egregious unfair trade practices, and to clarify the scope of his authority. Section 112 also specifically defines additional types of foreign practices as actionable under section 301. Finally, section 112 imposes tighter and more certain time limits for Presidential determinations and action.

A. Presidential authority

Present law

Under section 301(a), *if the President determines that action by the United States is appropriate:*

(1) to enforce U.S. rights under any trade agreement; or

(2) to respond to any act, policy, or practice of a foreign country that (a) is inconsistent with the provisions of, or otherwise denies U.S. benefits under, any trade agreement, or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce,

the President *shall take all appropriate and feasible action* within his power to enforce such rights or to obtain the elimination of the act, policy, or practice. Under section 301(b), the President *may* (1) suspend, withdraw, or not apply trade agreement concessions; and (2) impose duties or other import restrictions on the goods of, and fees or restrictions on the services of, the foreign country for such time as he deems appropriate. Under section 301(c), he also *may* restrict the terms and conditions, or deny the issuance, of any prospective service sector access authorization (e.g., license) that permits a foreign supplier of particular services access to the U.S. market.

Section 301 action may be taken on a nondiscriminatory (MFN) basis or solely against the foreign country involved. The action may or may not apply to the particular goods or services involved in the foreign act, policy, or practice.

Explanation of provision

Section 112 amends section 301(a)(1) to require *mandatory action* under subparagraph (A) by the President to enforce U.S. rights and to obtain the elimination of certain foreign unfair trade practices. If the President determines on his own motion, or if the USTR determines under section 304(a), that U.S. rights under an international agreement are being denied, or if an act, policy, or practice of a foreign government either (1) violates or is inconsistent with or otherwise denies U.S. benefits under a trade agreement, or (2) is otherwise "unjustifiable" and burdens or restricts U.S. commerce, the President would be required to take retaliatory action under section 301 (b) and/or (c), and to take all other appropriate and feasible action within his power to enforce U.S. rights or to obtain the elimination of the act, policy, or practice. The form of retaliatory action is discretionary, but the amount must be equivalent in value to, and necessary to eliminate fully, the burden or restriction imposed by the foreign unfair practice on U.S. goods or services.

However, as provided under subparagraph (B), *retaliatory action would not be required* under the following circumstances:

(1) If the GATT Contracting Parties determine or a GATT panel reports that U.S. trade agreement rights are not being denied or the act, policy, or practice is not a violation of, or inconsistent with, U.S. rights or does not deny, nullify or impair trade agreement benefits; or

(2) If the President finds that—

(a) the foreign country is taking satisfactory measures to grant U.S. trade agreement rights;

(b) the foreign government has agreed to eliminate or phase out the act, policy, or practice, or has agreed to an imminent solution to the burden or restriction on U.S. commerce that is satisfactory to the President;

(c) it is impossible for the foreign country to achieve the results under (a) or (b), but the country agrees to provide the United States compensatory trade benefits that are satisfactory; or

(d) such action is not in the national economic interest of the United States because it would result in U.S. economic interests being more adversely affected if action were taken than if not, and he reports the reasons to the Congress.

The President is required under new subparagraph (D) of section 301(a)(1) to report promptly in writing to the Congress with respect to each action taken or the reason for taking no action to enforce U.S. rights or to eliminate the foreign practice.

As provided under paragraph (2) of section 301(a), the President would retain his *discretionary authority* under present law to act, if he determines it is appropriate, in cases involving *"unreasonable"* or *"discriminatory" practices* which do not violate U.S. international legal rights. If the President determines on his own motion, or if the USTR determines under secton 304(a) as a result of an investigation that a foreign act, policy, or practice is unreasonable or discriminatory and burdens or restricts U.S. commerce, the President, if he determines that action by the United States is appropriate, shall take all appropriate and feasible action within his power to obtain the elimination of the act, policy, or practice. Such action may include retaliatory import restrictions imposed on goods or services under subsections (b) or (c).

As provided under new paragraph (3), the President may not take any action under any section 301 action with respect to a foreign country during any time when action is required to be taken regarding that country under section 311.

Paragraph (4) requires the President, before determining to take section 301 action which would restrict imports, to take into account the likely impact such action would have on U.S. agricultural exports. The notice required under section 301(d) of the President's determination must include a statement regarding the likely impact, it any, of an import-restricting action on U.S. agricultural exports.

Section 112 also amends section 301(b) by adding specific authority for the President to withdraw or not proclaim beneficiary status to a developing country or to deny duty-free treatment to any product of a beneficiary developing country under the Generalized System of Preferences (GSP) program of Title V of the Trade Act of 1974 as a form of section 301 action.

Reasons for change

The primary purpose of the amendments made by section 112 is to provide greater certainty of response by the United States to enforce U.S. rights under trade agreements and to remove or redress foreign practices recognized as illegal or otherwise unjustifiable. At the same time, the amendment recognizes that retaliation in the form of import restrictions is the least preferable outcome of a dispute and should not be required if the foreign country has agreed to eliminate or phase-out the practice in a satisfactory manner or, while preserving the practice, has removed or otherwise solved the burdensome or restrictive effect on U.S. commerce. Alternatively, the foreign country may, if it cannot remove or alleviate the impact of the practice itself, offer satisfactory compensation in the form of new trade opportunities which, consistent with GATT practice, would be preferable to imposing restrictive retaliatory measures.

The Committee intends that the United States exercise section 301 authority vigorously in pursuit of its international trade interests. The requirements for mandatory action with respect to the most egregious foreign practices reflects this intent and should provide additional leverage to obtain elimination or other satisfactory solutions to these practices. Mandating action with respect to certain cases in no way implies, however, that any less importance is attached to the vigorous pursuit of trade practicies which are unfair even though not yet covered by international obligations. Section 301 as amended will ensure full consideration of the action to be taken and its potential outcome by all affected domestic interests.

B. Additional actionable practices

Section 112 makes explicit that the burden or restriction of a foreign act, policy, or practice on U.S. commerce may be on U.S. trade with third countries. It also makes internationally-recognized worker rights, injurious export targeting, and toleration of cartels specifically actionable under section 301.

1. Internationally-recognized worker rights.

Explanation of provision

Section 112 amends section 301(e) to include in the definition of "*unreasonable*" any act, policy, or practice that denies internationally-recognized worker rights. Such rights would include (1) the right of association, (2) the right to organize and bargain collectively, (3) a prohibition on the use of any form of forced or compulsory labor, (4) a minimum age for employment of children, and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occuptional safety and health.

Reasons for change

The present definition of "unreasonable" acts, policies, or practices which are specifically actionable under section 301 includes, but is not limited to, the denial of fair and equitable market opportunities, opportunities for the establishment of an enterprise, and provision of adequate and effective protection of intellectual property rights.

The basic purpose of the amendment is to define as an unfair trade practice actionable under section 301 the competitive advantage in international trade that some countries derive from the systematic denial to their workers of basic internationally-recognized worker rights. The amendment adds to the illustrative list of unreasonable practices which the United States regards as unfair trade practices even though they may not be subject to international trade agreements.

The particular worker rights enumerated are each covered by a convention of the International Labor Organization (ILO) ratified by a large number of countries. While the United States has not ratified these ILO covenants, each of the standards is fully recongized by the United States under the Constitution or under separate domestic statutes.

It is not the intent of the amendment to apply U.S. laws or to impose U.S. standards of worker rights verbatim to other countries or to define as unfair the wage levels, hours of work, or health and safety standards in foreign countries which are not at the same level as those in the United States. The provision also recognizes that minimum wage levels, for example, will differ among countries depending on levels of economic development and other indigenous conditions.

The enumeration of worker rights is identical to the list included in section 502(a)(4) of the Trade Act of 1974 as a basis for determining eligibility for duty-free treatment under the GSP program. The list specifies the particular worker rights included in the definition and is intended to be all-inclusive, not illustrative, of the rights which could be the subject of petitions and potentially actionable under section 301.

2. Injurious export targeting.

Explanation of provision

Section 112 amends section 301(a)(1) to add a new subparagraph (C) which makes "injurious export targeting" actionable as an unfair policy or practice. The President is required to take section 301 action, but the form of such action is discretionary. If (1) the USTR determines that a policy or practice of export targeting by a foreign country exists with respect to a class or kind of merchandise under investigation and (2) the U.S. International Trade Commission (ITC) determines under section 302(d), as amended, that imports or sales for importation of that merchandise are causing material injury, the threat of material unjury, or retardation of a U.S. industry, the President is required to take all appropriate and feasible action within his power to obtain the elimination of, and or to offset fully the injurious effects of such targeting.

Action by the President would consist of:

(1) Retaliatory action under section 301(b) and/or (c) against the goods or services of the foreign country;

(2) Entry into an agreement under which the foreign country provides an imminent solution to the burden or restriction on U.S. commerce, or compensatory trade benefits satisfactory to the President;

(3) Administrative actions and, if necessary, proposed legislation to implement any other government action which would restore or improve the international competitive position of the industry; or

(4) any combination of these actions.

Any retaliatory action must affect goods or services of the foreign country in an amount that is equivalent in value to, and necessary to eliminate fully, the burden or restriction on U.S. goods or services not otherwise eliminated or offset. Any action must, to the extent possible, reflect the full benefit level of the targeting to the beneficiary over the period during which it has an effect.

"Export targeting" is defined under section 301(e), as amended, as "any government plan or scheme consisting of a combination of coordinated actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist such enterprise, industry, or group to become more competitive in the export of any class or kind of merchandise."

Section 113 contains procedures, criteria, and guidelines for determinations by the USTR of export targeting and by the ITC of injury to the domestic industry by reason of imports or sales for importation of the targeted merchandise.

Reasons for change

Section 301 presently applies to export targeting practices to the extent they meet the statutory criteria, but not to particular practices which may be part of a targeting scheme, such as home market protection, but are not GATT illegal or recognized as "unfair."

The inclusion of injurious export targeting within the scope of section 301 authority reflects the growing recognition in the United States that foreign industrial targeting practices can have an injurious impact upon the viability and competitiveness of U.S. industries. Basically, the provision applies to situations where the foreign government has sought to develop a particular industry by creating a relatively risk free environment to provide a competitive advantage the industry would not otherwise have under normal market conditions. Targeting is different from other potentially trade-distorting practices in that it involves a combination of actions, any one of which may have a marginial impact on the industry's competitiveness, but which taken together artificially create a comparative advantage for the selected industry.

At the same time, the provision is not directed in any way against foreign industrial policies per se, which are solely a matter of internal government choice. Rather, it applies only when those targeting practices have the effect of increasing the export competitiveness of a particular industry in a manner that is injurious to U.S. producers. If such policies cause harm to U.S. industries, they become an appropriate matter for action under U.S. trade laws. In the absence of injury, section 301 authority would not apply.

The inclusion of injurious exporting targeting as an actionable section 301 policy or practice is not intended to prejudice the seeking of a remedy under the existing domestic relief laws as appropriate in the particular circumstances of each case. In fact, the countervailing duty law is the appropriate statute for seeking a remedy to any subsidy practice which may be included in a targeting plan or scheme. Rather, section 301 will provide a recourse for dealing with the *combination* of practices that constitute export targeting that has an injurious impact on domestic industries.

A determination of export targeting by the USTR would involve three elements. First, there must be a government scheme or plan involving coordinated actions. A positive determination would require that the targeting policy actually involve definite actions, not merely advice or a "vision" by the government. The actions also must not be isolated or uncoordinated; rather, they must be integrated into a reasonably coherent plan or scheme. While a showing of specific intent is unworkable given the unlikelihood of available evidence, the "plan or scheme" requirement is designed to ensure that the law deals with purposeful targeting and not with discrete forms of government activity.

Second, the USTR must determine that targeting practices are involved. The competitive advantage gained by targeting is typically achieved through a combination of practices, such as, but not limited to, directing private capital as well as government financial resources to the particular industry on a preferential basis, establishing an industry cartel, providing preferential sourcing of government procurement, closing or restricting the home market to foreign competition or investment in order to provide special protection during the establishment and development of the industry. These policies or practices supplement more traditional forms of subsidies and, when part of a government plan or scheme, have an effect similar to financial assistance in assisting a specific enterprise or industry to become more export competitive. However, the provision is directed primarily to the more sophisticated, less direct techniques which achieve similar results as direct subsidies that governments have resorted to as more traditional export subsidy practices are prohibited under international rules.

Third, the USTR must determine that the export targeting has the effect of assisting a discrete class of companies or industries to become more competitive in their export activities. The provision does not require a showing that the intent or purpose of the export targeting subsidy is to improve the competitiveness of a foreign industry in the U.S. market. A determination of motivation would be extremely difficult to make and would reduce the prospects for action. Rather, the *effect* of the government plan or scheme must be to promote export competitiveness in a manner that is injurious to U.S. industry.

Policies or practices would not be defined as export targeting unless they are bestowed upon a specific enterprise or industry or group thereof. Such practices which are generally available to industries within the country would not be covered within the definition of export targeting.

Finally, export targeting would not be actionable under section 301 unless the ITC determines that imports are sales for importation of the targeted merchandise cause or threaten material injury to the U.S. industry. While individual targeting actions may have only a marginal impact, their cumulative effect may create an export competitive advantage which is injurious to the U.S. industry.

Action taken under section 301 must reflect as accurately as possible the full benefits of the targeting plan or scheme to the beneficiary enterprise or industry over the period during which it has an effect, rather than solely the cash cost to the foreign government. This method is necessary for making a realistic assessment of the actual benefit level in targeting cases, since many of the practices may not involve a simple cash transfer and their cumulative benefit may be greater than the current monetary value of an individual practice. For examply, closing the home market to foreign competition or suspending antitrust laws may yield profits from higher prices and economies of scale that confer substantial competitive advantages to an industry. These benefits should be reflected in actions taken equivalent in value to, and necessary to eliminate fully, the foreign practice or to offset its injurious effects on the U.S. industry.

The Committee intends that export targeting be actionable under section 301 if USTR determines that targeting is still in existence and meet the statutory definition, even though certain individual targeting practices may have ceased by the time the case is under investigation. Depending on the circumstances of the particular case, the assessment of the full benefit of the targeting could include the effect of targeting actions which were bestowed prior to the period of importation but which are still having an effect on the imports of the particular merchandise. Such an assessment would ensure that foreign countries cannot freely reap the current benefits of past unfair practices. In the future, domestic industries could seek action on the basis of export targeting which threatens material injury, before the full impact of targeting occurs.

Concerns have been expressed that certain U.S. Government practices (for example, investment tax credits; "spillover" benefits of defense and space research and development programs to the computer, commercial aviation, and spacecraft industries; and financing of agricultural price supports) may become subject to "mirror" actions by foreign countries against U.S. exports. It is highly questionable, however, that such practices would constitute injurious export targeting, i.e., targeting which would require a government plan or scheme consisting of coordinated actions assisting a specific industry to become export competitive in a manner which is injurious to foreign producers.

3. Toleration of cartels.

Explanation of provision

Section 112 amends section 301(e) to include the toleration of cartels in the definition of "unreasonable" acts, policies, or practices actionable under section 301.

Reasons for change

The amendment clarifies that cartel functions such as those which operate as a effective mechanism for excluding or restricting U.S. export sales in a particular market should be regarded as an unfair practice.

C. Presidential determinations and action

Present law

Section 301(d)(2) requires the President to determine within 21 days after he receives a recommendation from the USTR under section 304 what action, if any, he will take under section 301. The President may also decide under section 301(d)(1) to take section 301 action on his own motion.

Explanation of provision

Section 112 amends section 301(d)(2) to require the President to determine and implement any section 301 action within 30 days after the date he receives the recommendation of the USTR under section 304. However, the President may delay his determination and/or the implementation of any retaliatory action under subsection (b) or (c) for up to 90 days if: (1) the petitioner or the domestic industry requests a delay, or (2) the President determines that substantial progress is being made to grant U.S. rights or to achieve a satisfactory solution with respect to the act, policy, or practice.

Section 112 also amends subsection (d)(2) to require the President to publish notice promptly in the Federal Register of each determination with respect to action, each delay in deciding on or implementing action, and the reasons for the determinations or delay.

Reasons for change

The present statute does not require the President to make a final decision within a specific time frame on what action, if any, he will take under section 301. A determination that "procedural" action, such as continuation of consultations with the foreign country or GATT dispute settlement proceedings, is the appropriate response has been regarded by the USTR as sufficient to satisfy the statutory requirement for a Presidential determination within 21 days after receiving the USTR recommendation. As a result, there has been no standard or definitive time frame applied for taking "substantive" section 301 action which may later be deemed appropriate or for concluding a case.

The amendment would impose a time limit on the President to decide any section 301 action he will take, including retaliation, and to implement that action. The purpose of the amendment is to expedite decisions and actions in meritorious section 301 cases, and to bring cases to final resolution within a reasonable time frame. The amendment will provide petitioners or domestic industries a time certain for knowing what, if any, action will be taken on their behalf. Under present law, cases have often continued under discussion for years without a final determination to act or to terminate, particularly when GATT proceedings are involved. However, the time limit imposed by the amendment is not intended to preclude the continuation of negotiations but rather to provide additional leverage to obtain a satisfactory resolution.

SECTION 113. EXPORT TARGETING

Present law

No provisions.

Explanation of provision

Section 113 of the bill amends section 302(b)(2) to require the USTR to make a determination as to whether export targeting exists within 6 months after initiating an investigation under subsection (b)(1) with respect to a petition filed under subsection (a) alleging export targeting. The USTR may consult with appropriate Federal agencies in making that determination. The USTR must publish notice of the determination in the Federal Register.

If the investigation initiated concerns alleged export targeting, the USTR must immediately transmit a copy of the petition, or a written description of the issues if the investigation was self-initiated, to the ITC. As provided under a new section 302(d), the Commission must determine and report to the USTR within 6 months after the petition or description was transmitted by the USTR whether the U.S. industry is *materially injured, or threatened with material injury,* or the establishment or growth of a U.S. industry is materially retarded, by reason of imports or sales (or the likelihood of sales) for importation of the class or kind of merchandise with respect to which there is alleged export targeting.

In making its determination, the ITC must consider, among other factors, the economic factors specifically enumerated in section 302(d), including the volume of imports or sales of the merchandise, the effect of such imports or sales on prices in the United States for like products, and the imports or sales in the U.S. market on domestic producers of like products. The ITC shall also take into account such information as may be available to it on actual or potential sales by the foreign country in third country markets and their impact on sales or prices of like products of the U.S. industry to those third country markets.

If during the course of its investigation, the ITC has reason to believe that a foreign government is engaged in subsidy practices actionable under the countervailing duty law, the Commission shall inform the Secretary of Commerce and the USTR. The USTR shall consult with the petitioner, if any, regarding the advisability and desirability of taking action under those provisions.

Reasons for change

The amendments contain the procedures to be used by the USTR in determining whether export targeting exists and the standards and factors for consideration by the ITC in determining injury to a domestic industry.

The Committee believes that USTR is the most appropriate agency, given its access to information from and consultations with foreign governments, to determine the existence of targeting. However, USTR should draw upon information and expertise of other agencies with respect to targeting practices in making its determinations.

The ITC should be guided in its interpretation of the material injury standard, in the application of particular factors for determining material injury or the threat thereof, and in determining causation by the legislative history and actual practice under the countervailing and antidumping duty laws. The factors specifically enumerated for consideration address the impact on the domestic industry by reason of imports or sales for importation of allegedly targeted merchandise in the U.S. market. Factors which address sales or price declines for U.S. exports of like products to third countries are intended only as additional indicators of the vulnerability of the domestic industry. As is the case under other unfair trade statutes, any determination of a threat of material injury must be based on evidence that the threat of injury is real and that actual injury is imminent, and may not be made on the basis of mere conjecture or supposition.

The Committee recognizes that the impact of targeting on domestic industries may result from sales by the targeting country to third country markets, which displace or undercut prices of U.S. products, as well as from sales in the U.S. market. The Commission should take into account as an additional factor in determining injury to the domestic industry such information as may be available to it as to actual or potential sales by the respondent (seller) in the foreign country to third country markets and the impact of such sales on the affected U.S. industry. However, the Committee does not intend that the Commission conduct field investigations in foreign countries to obtain such information.

Investigations by the USTR of targeting and by the ITC of injury by reason of such merchandise will proceed in parallel and conclude within 6 months after initiation. Affirmative determinations on both elements would be followed by up to 5 months for the USTR to negotiate with the foreign government and to develop a response for recommendation to the President. Otherwise, the investigation would terminate if either or both determinations are negative.

SECTION 114. INVESTIGATORY PROCEDURES

Section 114 of the bill amends various provisions concerning the obtaining and use of information during investigations, and the requirements for obtaining the views of, and consulting with, various interested parties that may be affected by section 301 actions.

A. Obtaining information

Present law

The investigatory procedures used by the USTR under section 302 do not contain any statutory provisions with respect to the obtaining, verification, or use of information obtained for making determinations.

Explanation of provision

Section 114 adds a new section 302(e) concerning the obtaining of information by the USTR for investigations and determinations. With respect to any investigation initiated, the USTR shall direct appropriate inquiries to the foreign countries relevant to the investigation for purposes of obtaining information relevant to determinations and recommendations. The USTR may request the foreign country to provide documentation or permit verification of the information as the USTR considers appropriate. The USTR may disregard all or part of the foreign country information requested and use the best information otherwise available if the foreign information is not timely, is incomplete or inadequate, or is not sufficiently documented or verified.

Reasons for change

The amendment providing for inquiries to foreign countries to obtain information reflects current USTR practice. There is no uniform procedure or practice in place, however, for the treatment or use of information obtained in section 301 cases. The amendment authorizes the USTR to use certain procedures for verification and use of foreign information but is not intended to remove the flexibility necessary for conducting investigations as appropriate to the circumstances of the particular case. Most importantly, the amendments authorize the USTR to use the best information otherwise available if foreign information is not timely or satisfactory in a particular case.

B. Obtaining views

Present law

Any interested person may file a petition under section 302(a) with the USTR requesting the President to take action under section 301 and setting forth the allegations in support of the request. If, after its review of the allegations, the USTR determines to initiate an investigation, he must publish a summary of the petition and provide an opportunity as soon as possible for the presentation of views concerning the issues, including a public hearing if a timely request is made by the petitioner or by any interested person.

Section 303 requires the use of international procedures to proceed in parallel with the domestic investigation in order to seek resolution of the issues. The USTR, on the same day as he initiates an investigation, must request consultations with the foreign country concerned regarding the issues raised in the petition. If the issues are covered by a trade agreement and are not resolved during the consultation period, if any, specified in that trade agreement, then the USTR must promptly request formal dispute settlement proceedings.

The USTR may delay the request for consultations with the foreign government for up to 90 days after the investigation is initiated, with a published notice and report to the Congress of the reasons, in order to verify or improve the petition to ensure an adequate basis for consultations. The USTR must seek information and advice from the petitioner and from appropriate private sector advisory committee representatives in preparing U.S. presentations for foreign consultations and dispute settlement proceedings.

Before making a recommendation under section 304 to the President on what section 301 action, if any, he should take with respect to any product or service subject to the petition, the USTR must afford an opportunity for the presentation of views, including a public hearing if requested by any interested person, and seek advice from appropriate private sector advisors. The USTR may request ITC views on the probable impact on the U.S. economy of taking action with respect to particular products or services. If the

USTR determines expeditious action is required, he must comply with these requirements after making the recommendation to the President.

Explanation of provision

Section 114 amends various provisions to the procedural requirements in order to increase input by, and consultations with, private sector interests that may be affected by section 301 actions.

The USTR must consult with the petitioner before deciding to delay consultations under section 303(b) with the foreign government. The USTR must provide a minimum 30-day advance notice for the presentation of views by interested persons under section 304(b) before making recommendations to the President on section 301 action. The definition of "interested persons" added to section 301(e) for purposes of presenting views on the issues raised in petitions and on recommendations to the President on action specifically includes, but is not limited to, domestic firms and workers, cosumer representatives, and exporters that may be affected.

In export targeting cases, the USTR must also consult with representatives of the affected U.S. industry and workers and other interested persons concerning the nature of appropriate remedial action, including possible affirmative measures to enhance the international competitiveness of the industry.

Reasons for change

The purpose of the amendments is to ensure that the USTR has provided adequate opportunity for all private sector interests that may be affected by a particular section 301 action to present their views. The consultations required in export targeting cases are for the purpose of assisting in the choice of an appropriate response, taking into account all interests that may be affected.

As an example, the Committee is aware that domestic rose growers have faced severe problems with international competition and that the industry has brought the nature of these problems to the attention of the Administration through the filing of a petition under section 301.

In view of complaints that the USTR met with officials of the Colombian government and growers, and received arguments from Dutch grower representatives, yet did not meet with domestic growers or representatives nor allow them to rebut those arguments, the Committee is concerned that the industry's section 301 petition may not have been given fair and thorough consideration. At the urging of the Committee, the USTR agreed to meet with domestic rose growers about their petition.

The Committee expects the USTR to give thorough consideration to the rose growers' section 301 petition in an expeditious timeframe and to make a decision on the merits as to whether an investigation and action may be appropriate. If the Committee later decides that there has been insufficient attention to this problem, it will consider further legislative action.

SECTION 115. MANDATORY INITIATION OF CERTAIN INVESTIGATIONS BY TRADE REPRESENTATIVE

Present law

Section 302(c) authorizes the USTR to self-initiate an initiation on any matter in order to advise the President concerning the use of his section 301 authority, after consulting with the appropriate private sector advisory committees.

Explanation of provision

Section 115 of the bill amends section 302(c) to require that the USTR consult with interested persons and self-initiate an investigation within 90 days after identifying an act, policy, or practice in the annual report required under section 181(b) of the Trade Act of 1974 as having a significant adverse impact on U.S. exports, if (1) the act, policy, or practice is likely to be inconsistent with, or otherwise denies U.S. benefits under, a trade agreement or is unjustifiable and burdens or restricts U.S. commerce, and (2) it is not otherwise the subject of a section 301 investigation. In addition, the USTR must determine before self-initiation that (1) the consultations indicate that action would likely result in expanded export opportunities for U.S. products; (2) action would not likely result in U.S. exports suffering significant adverse effects because of displacement in export markets, foreign retaliation, or "mirror" foreign actions; and (3) it is in the U.S. economic interest to initiate an investigation.

Reasons for change

The purpose of the amendment is to provide greater certainty that the U.S. Government will investigate and respond as appropriate to the most egregious foreign unfair trade practices which have a significant adverse impact on U.S. exports. However, since an investigation could potentially lead to mandatory action under section 301, self-initiation would not proceed without prior consultations with domestic interests likely to be affected and a determination by USTR that section 301 action is likely to be favorable for U.S. export and other economic interests.

However, the requirement that the USTR self-initiate investigations in certain cases involving practices which are likely to constitute violations of international agreements should in no way prejudice or attach any less importance to the consideration of petitions and the initiation of investigations by USTR of alleged unfair practices which are not yet covered by international agreements. The Committee believes that USTR should continue to exercise its section 301 authority vigorously and initiate investigations pursuant to petitions alleging unreasonable or discriminatory, as well as unjustifiable practices, including investigations of practices that involve subject matters which are principal U.S. negotiating objectives not covered by international rules.

SECTION 116. RECOMMENDATIONS FOR PRESIDENTIAL ACTION BY TRADE REPRESENTATIVE

Section 116 of the bill transfers certain authority from the President to the USTR, and imposes stricter time limits in certain cases for completing investigations and making recommendations to the President.

A. Authorities of the President and the U.S. Trade Representative

Present law

The USTR receives and reviews petitions filed under section 302, determines whether to initiate investigations, conducts the factual investigation (based on a petition or self-initiation), represents the United States in consultations and dispute settlement proceedings with foreign governments, and recommends to the President what action, if any, he should take under section 301. The President determines whether section 301 action is appropriate and, if so, decides and implements the action to be taken. No statutory determination is required by the President as to whether section 301 criteria are met by the particular foreign act, policy, or practice under investigation.

Explanation of provision

Section 116 amends section 304(a) to transfer to the USTR the authority to determine whether and what section 301 criteria are met by the particular foreign act, policy, or practice and requires that such a statutory determination be made in all cases. The USTR must determine whether U.S. rights are being denied or any foreign act, policy, or practice actionable under section 301 exists and, if affirmative, make recommendations to the President on what action he should take. The President the authority to determine and implement section 301 action, if any.

Reasons for change

The amendment strengthens the role of the USTR in the section 301 interagency decisionmaking process by transferring authority from the President to determine whether a particular foreign practice meets section 301 criteria. At the same time, the amendment recognizes that the President should retain ultimate authority to decide and implement section 301 actions, which may invoke his Constitutional powers and involve U.S. national economic interests beyond the scope of trade policy.

B. Time limits for investigations and recommendations

Present law

Section 302(a)(2) requires the USTR to review the allegations in a petition and determine, within 45 days after the petition was received, whether to initiate an investigation. Section 303 requires that on the same day as the USTR initiates an investigation, he must request consultations with the foreign government involved concerning the issues. This request may be delayed for up to 90 days in order to verify or improve the petition.

Section 304(a) requires the USTR to make a recommendation to the President within certain time limits on what action, if any, he should take under section 301 authority with respect to the matters under investigation. Recommendations are based on the investigation under section 302 and the international consultations (and dispute settlement proceedings if applicable) under section 303.

The USTR must make a recommendation to the President not later than—

7 months after initiation of the investigation if the petition alleges only an export subsidy covered by the GATT Subsidies Agreement;

8 months after initiation of the investigation if the petition alleges a domestic subsidy or both export and domestic subsidies covered by the GATT Subsidies Agreement;

30 days after the dispute settlement procedure is concluded if the petition involves a trade agreement other than the Subsidies Agreement; or

12 months after initiation of the investigation in any other case.

These time limits may be extended by up to 90 days if the request under section 303 for foreign consultations was delayed.

Explanation of provision

Section 116 makes no change in the 45-day time limit for making determinations on whether to initiate an investigation and for requesting consultations with the foreign government involved. Section 116 amends the time limits under section 304(a) to require the USTR to determine whether section 301 criteria are met and to make recommendations to the President not later than—

7 months after initiation of the investigation if only an export subsidy is alleged (i.e., no change);

8 months after initiation of the investigation if a domestic subsidy or both domestic and export subsidies are alleged (i.e., no change);

30 days after conclusion of dispute settlements or 9 months after initiation of the investigation, whichever occurs first, if a trade agreement other than the Subsidies Agreement is involved; or

9 months in any other case (11 months if the petition alleges export targeting).

These time limits may be extended by up to 90 days to conform to any period of delay in the request for foreign consultation.

Reasons for change

The amendments would impose a more certain and shorter time period for concluding investigations and making recommendations in section 301 cases that do not involve allegd subsidy practices. At the present time, there is no fixed or standard time limit for conclusion of GATT dispute settlement proceedings. Particularly in cases involving proceedings under the general consultation and dispute settlement procedures of GATT Articles XXII and XXIII, there may be lengthy procedural delays or countries may block adoption of panel findings. The imposition of a maximum 9-month time limit for USTR determinations and recommendations in nonsubsidy GATT cases will hopefully provide leverage and incentive for adoption in the GATT of more expeditious and effective dispute settlement procedures. In any case, exercise of the domestic statutory authority under section 301 is not contingent upon completion of international proceedings or upon an international finding that a particular practice is actionable. Rather, section 301 should afford a timely response to domestic petitioners and industries faced with foreign unfair practices even if such proceedings are not concluded within a reasonable time frame.

Similarly, a reduction in the time limit from 12 months to months should provide a sufficient period for investigations of c[illegible] which do not involve trade agreements or international dispute settlement proceedings. The 11 months provided in injurious export targeting cases provides a 5-month period after an affirmative determination for the USTR to negotiate with the foreign country and to develop an appropriate solution to these complex cases.

SECTION 117. MODIFICATION AND TERMINATION OF ACTIONS

Present law

There is no explicit authority under present law for the President to modify or terminate section 301 actions, or to provide compensatory trade concessions to foreign countries if section 301 tions violate U.S. international obligations under trade agr[illegible]

Explanation of provision

Section 117 of the bill adds a new section 307 which specific[illegible] authorizes the President to modify or terminate a section [illegible] action if—

(1) the GATT Contracting Parties determine or a GATT panel reports that the action violates, or is inconsistent with U.S. international obligations or that the foreign act, policy, or practice is not a violation of or inconsistent with a trade agreement or does not otherwise deny, nullify, or impair tr[illegible] agreement benefits; or

(2) the President determines (a) the foreign act, policy, or practice is being eliminated or phased out satisfactorily, or (b) the section 301 action is not effective or its continuation is not in the national economic interest.

The USTR must conduct a biennial review and assessment of the results of each action taken under section 301, and recommend to the President any modifications or termination he considers [illegible]priate. The USTR must consult with the petitioner and other interested persons affected by the action concerning its effecti[illegible] and whether any modification or termination is indicated. The President must promptly publish and report to the Congress [illegible] modification or termination and the reasons.

Section 175 of the Act amends section 123 of the Trade Act of 1974 to authorize compensation agreements with foreign countri[illegible] affected by section 301 actions if necessary or appropriate to m[illegible] U.S. obligations to restore the balance of trade agreement concessions.

Reasons for change

The amendments will provide the USTR specific authority to modify or terminate section 301 actions if they are subsequently found to violate the GATT or if the action is ineffective. Modifications could either be reduction or elimination of the action if it has achieved the desired objective or continuation is not in the U.S. economic interest, or additional or increased measures if further leverage or offsetting action is deemed necessary and appropriate. Compensation authority is available as provided under section 175 of the bill if section 301 actions are found to violate the GATT.

SECTION 118. BARRIERS TO MARKET ACCESS

Present law

Section 181 of the Trade Act of 1974, as added by section 303 of the Trade and Tariff Act of 1984, requires the USTR to prepare an annual report which identifies and analyzes foreign acts, policies, and practices which constitute significant barriers to, or other distortions of, U.S. exports of goods or services and trade-related foreign direct investment. The USTR must also include an estimate of the trade-distorting impact of the barrier on U.S. commerce.

Explanation of provision

Section 118 of the bill requires the USTR to identify those acts, policies, and practices included in the report which have a significant adverse impact on U.S. exports. The Committee on Foreign Affairs, as well as the Committee on Ways and Means, would receive the report.

Reasons for change

The amendment makes a conforming change to the provisions under section 115 for self-initiation of investigations with respect to certain practices that have a significant adverse impact on U.S. exports. The amendment also recognizes the interest of the Committee on Foreign Affairs in receiving information in the report as it pertains to U.S. export trade.

SECTION 119. MANDATORY NEGOTIATIONS AND ACTION REGARDING FOREIGN COUNTRIES HAVING EXCESSIVE AND UNWARRANTED TRADE SURPLUSES WITH THE UNITED STATES

Present law

There are no special provisions mandating reductions in the trade surpluses of countries that maintain patterns of unjustifiable or unreasonable trade policies or practices. Section 301 generally permits the President to take certain actions against such policies or practices, but on a discretionary basis against specific practices or policies.

Explanation of provision

Section 119 adds a new Subchapter B to Title III—section 311 (a) through (j)—to mandate negotiations and possible Presidential action against any country which meets three general criteria: (a) a large and excessive trade surplus with the United States (as defined below); (b) a global trade surplus; and (c) a pattern of unjustifiable, unreasonable, and discriminatory trade policies or practices that have a significant adverse effect on United States commerce and that contribute to such country's excessive surplus. The provision mandates modest "surplus reduction goals" for countries which meet these criteria for the period 1987 through 1991.

Under section 119, the International Trade Commission (ITC) makes annual findings with respect to excessive bilateral and global surpluses, while the United States Trade Representative (USTR) makes the annual determination as to a country's overall trade policies and negotiates with such country to achieve the surplus reduction goals. If such negotiations fail, the President is given a broad range of options for action against such countries to ensure reduction in their surpluses. The President is required to take such action, unless he determines that such action is not in the national economic interest. He also may reduce the surplus reduction goals to take account of a particular country's balance of payments problems. Any waiver or reduction under these latter provisions may be disapproved by Congress under fast track legislative procedures; even if a waiver or reduction is granted, the President must continue to pursue the fundamental goals of the section through negotiations and other measures.

The new provisions of section 119 would operate in the following manner:

a. ITC determinations

Under a new section 311(a), the International Trade Commission (ITC) is required to make an annual determination as to whether any "major U.S. trading partner" (countries with more than $7 billion in trade with the U.S. in 1985 adjusted annually thereafter) maintains an "excessive trade surplus" (a ratio of bilateral nonpetroleum exports over nonpetroleum imports of 175 percent; a total bilateral nonpetroleum surplus with the United States in excess of $3 billion; and a global trade surplus). The first such determination is to based on 1985 trade and is required within 2 months of the date of enactment. Subsequent annual determinations for 1986–1990 trade are due within 3 months of the completion of the calendar year. No ITC determinations are required if the U.S. merchandise trade deficit is less than 1.5 percent of GNP.

b. USTR determinations and country list

Under a new section 311(b), within 15 days after the ITC determination, the USTR must determine whether any "excessive surplus" country maintains a "pattern of unjustifiable, unreasonable or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country." This determination is to be based upon findings in the National Trade Estimates Reports under section 181 of the Trade Act of 1974, findings and determinations under section 301 of the Trade Act of 1974, the Antidumping Law and the Countervailing Duty Law, and other relevant information (including GATT findings). Evidence of such a pattern would include: subsidy policies; targeting policies; illegal trade barriers; unreasonable or discriminatory procurement policies; a burdensome tariff structure; excessive regulatory activity designed to discriminate against U.S. products; and tolerance of extensive dumping in foreign markets by the government.

If the USTR's determination is affirmative, such country must be placed on a list of countries with "excessive and unwarranted bilateral trade surpluses" and is subject to further negotiations and actions which require that country to achieve specified "surplus reduction goals."

c. Surplus reduction goals

A newly created section 311(c) sets forth the surplus reduction goals required of excessive and unwarranted surplus countries. These goals are:

For the first year—a 10 percent reduction below its 1985 surplus;

For the second year—a 10 percent reduction below its surplus for the prior year;

For each subsequent year through 1990, a further 10 percent reduction.

However, it at any time during this period the country falls below the base level and ratio for "excessive surpluses" (175 percent nonpetroleum export/import ratio and a bilateral nonpetroleum surplus of $3 billion) it will be removed from the list. Also, if at any time a country is no longer found to maintain a pattern of unjustifiable, unreasonable, or discriminatory trade policies, it will be removed from the list.

d. USTR negotiations

After a country is placed on the list, under a new section 311(d) the USTR is given 2 months (with a possible 2-month extension if necessary) to negotiate an agreement with such country which achieves the surplus reduction goals set forth in paragraph (c).

e. Presidential action if negotiations are unsuccessful

If no agreement is achieved, the President is required under a new section 311(e) to take any of the following actions that he considers necessary or appropriate to achieve the surplus reduction goals:

(1) Suspend, withdraw, or prevent the application of benefits of trade agreement concessions to carry out any trade agreement with that country.

(2) Direct customs officers to assess duties or impose other import restrictions on the products of that country for such time, in such an amount, and to such a degree as the President determines appropriate.

(3) Negotiate agreements (including, but not limited to, orderly marketing agreements) with that country.

(4) Take administrative action, and if necessary, proposed legislation, to implement any other government action which would restore or improve the international competitive position of United States industries with that country.

However, if, for any year the actions of the President with respect to a given country are not sufficient to meet the surplus reduction goals, then for the following and subsequent years (assuming that country is still on the list) the President must impose quantitative limits on imports from the country in a manner sufficient to achieve the surplus reduction goals. No Presidential actions are required if the U.S. merchandise trade deficit is less than 1.5 percent of GNP.

f. Reviewable Presidential waivers

A newly created section 311(f) sets forth two conditions under which the President may waive other provisions of section 311.

1. Balance of payment difficulties.—The President may reduce the deficit reduction goals as he deems appropriate on an annual basis for any country if he determines that, by virtue of its balance of payments difficulties (including debt repayments) it would not be possible for that country to meet the surplus reduction goals without significant economic harm, and if he reports such determination and goal reductions to the Congress. The President also must develop a plan of action for otherwise achieving the fundamental purposes of section 119, and submit that plan to the Congress. Congress may, by fast track legislation under section 151 of the Trade Act of 1974, restore the statutory deficit reduction goals in whole or in part.

2. Substantial harm to national economy.—The President may waive the requirement to take action under subsection (e) if he determines that such action would cause substantial harm to the U.S. economy. However, he must submit such determination to the Congress together with a justification and an alternative plan which he will pursue to achieve the fundamental purposes of section 119. If the Congress, within 60 days, enacts a disapproval of such a waiver, under the fast track legislative procedures of section 151 of the Trade Act of 1974, then such waiver is void.

Reasons for change

The Committee believes that a new, comprehensive procedure is necessary to fill a significant void in U.S. trade law. Current trade laws, dealing as they generally do with sector-specific problems, have not proved effective in countering the trade-distorting policies and practices of countries experiencing large and persistent trade surpluses through the widespread use of unfair trade practices. Even section 301 (prior to this amendment), while considered a flexible statute capable of dealing with a wide range of unfair trade practices, has generally been used to address foreign trade policies and practices affecting single sectors, such as insurance, informatics, and tobacco. It does not appear to the Committee that section 301, absent this amendment is sufficiently broad to deal with the full spectrum of a country's acts, policies, and practices as they affect that country's overall international trade position. Similarly, the new provision on targeting, while requiring a review of a wide range of a country's trade policies, deals essentially with the sector/specific results of targeting. In contrast, the Committee believes that section 119 gives the President all the authority and flexibility which he will need to induce large surplus countries to take immediate steps to remove their trade barriers and reduce their trade surpluses or face certain action by the United States if they fail to do so.

The need for this legislation seems clear. The GATT system of international trade is based on the fundamental premise that trade is a mutually advantageous proposition through which all nations gain through a higher standard of living for their citizens. The Committee does not dispute this premise. However, the Committee does believe that international trade, as pursued by some nations today, is not in fact mutually advantageous. The phenomenon of one or a few countries amassing huge trade surpluses through relatively unimpeded access to the U.S. market, while denying equitable access to their markets by the United States and other trading partners, robs the trading system of its essential characteristic of mutual advantage. The Committee believes that the time has come to call a halt to this type of broadly unequal access and the ability to profit handsomely by it, as some countries have done—and continue to do.

The Committee notes with interest certain data compiled by the GATT Secretariat, showing the share of imports by developed countries of those manufactured goods exported by developing countries to developed countries. These data show the following trends:

SHARE OF TOTAL INDUSTRIAL COUNTRY IMPORTS OF MANUFACTURES FROM LDC'S

[In percent]

	United States	Japan	E.C.	Canada	EFTA
1979	45.33	10.65	36.60	3.02	4.40
1980	44.93	8.86	38.42	2.70	5.09
1981	51.43	9.45	31.10	3.36	4.66
1982	52.80	8.86	30.39	3.16	4.79
1983	57.63	7.72	26.99	3.68	3.98
1984	61.57	7.95	22.96	3.89	3.63

Source: USTR, and GATT publication: International Trade 1984/85.

These trends show the United States absorbing an ever-increasing share of manufactured goods from developing countries, while other countries' or blocs' shares have either declined sharply (in the case of the EC) or have declined from a quite low share to an even lower share (as in the case of Japan). So while some major trading countries are reaping the gains of an open U.S. market, they are compounding the distortions of international trade patterns by taking an ever-shrinking share of developing country manufactured exports. The United States is left to take up the slack. Trends such as these must change, and they must change quickly.

The data above are just one example of the concerns felt by the Committee with respect to the trade policies and patterns of some of our major trading partners. Some of the same countries identified in the table are running large trade surpluses not only with the United States but with the world as well. Japan, for example, amassed a record $51 billion surplus with the United States and a $56 billion global trade surplus in 1985. West Germany's surplus with the United States totalled $13 billion in 1985, compared to a global surplus of $25 billion. Taiwan, which does not appear in the table above, ran a $13 billion surplus with the United States, compared to a global surplus of nearly $11 billion.

What seems clear is that certain countries are reaping large gains from the world trading system and appear unwilling to take the steps which are necessary to begin shouldering a greater share of the responsibilities—in addition to the benefits—of that system. The intent of section 119 is to give the President the leverage to bring about a more equitable sharing of that responsibility.

The first step in the process of determining whether a country maintains an excessive and unwarranted trade surplus comes from the ITC. The ITC finding as to whether or not a country maintains an excessive surplus with the United States is based on a number of criteria spelled out in detail in the previous section. These criteria were selected for a number of reasons. The requirement that a country have more than $7 billion in total trade with the United States is designed to exclude smaller trading nations from the purview of this legislation. While attempting to craft additional leverage for U.S. negotiators to open foreign markets, the Committee has no intention of throwing such a wide net that even countries with limited impact on the U.S. market are caught by its reach.

Oil was excluded from certain criteria of this section primarily because international trade in oil is so heavily dominated by vagaries of supply and price which are far outside the scope of normal market forces. As a result, trade patterns based on oil are themselves heavily distorted. In addition, while the OPEC cartel now appears to be weakening (at least temporarily), the basic determinants of petroleum trade stem from whether a country is oil-rich or oil-poor and have nothing to do with the degree of market openness of a particular country. Accordingly, oil trade does not appear to be an appropriate factor to consider when assessing a country's trade patterns as they relate to market openness.

The Committee nonetheless recognizes that some countries' resource endowment makes them structural importers of oil and requires that they export manufactured goods. Section 119 takes this fact into account in requiring that countries not only maintain a large bilateral non-oil surplus with the United States but that they also maintain a global trade surplus. If a country's overall balance of payments (including oil trade and debt payments, if any) is such that requiring that country to meet the surplus reduction goals would cause significant economic harm to that country, the President may reduce those goals, subject to Congressional override.

Once the ITC has identified major U.S. trading partners which maintain excessive trade surpluses, the USTR is given 15 days to determine whether any such country maintains "a pattern of unjustifiable, unreasonable, or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country."

Although a 15-day period for the USTR determination may appear short, the actual period available for this determination is far longer. For the first year, the USTR may begin an assessment on the date of enactment, since countries which are likely to fall within the scope of section 119 based on 1985 trade data already are well known. For subsequent years, the USTR can, through consultations with the ITC throughout the year and into the first two months of the following year (as that agency makes its determinations) assess whether trade patterns are likely to change sufficiently to require adding additional countries to the list.

The USTR's determination must be based on all the information at his disposal. The terms "unjustifiable, unreasonable, and discriminatory" have well-known and accepted meanings under section 301. The Committee intends the USTR to be guided in his determinations under this section by those meanings. In addition to reliance on those terms, the USTR is required to take into account all of the information available to him through a wide variety of domestic or international sources. Thus, while the USTR determination involves a certain amount of inherent subjective judgment, the Committee intends that the USTR make an overall assessment as to whether a country which is enormously successful in its trade with the United States is truly practicing fair and reciprocal trade or whether that country is using its policies and practices to frustrate reciprocal trade. With respect to this determination, the Committee intends that there be an affirmative determination even when the pattern involves only a relatively small number of policies or practices of sufficient magnitude to meet the basic test of unfairness. In addition, the Committee intends that there be an affirmative USTR determination in cases in which foreign government policies and practices bear heavily on a few key trading sectors in which large trade surpluses contribute heavily to the excessive bilateral surplus. However, there must be a clear demonstration that these policies and practices have a significant adverse effect on U.S. commerce and contribute to a country's excessive trade surplus.

Once the USTR determines that a country's trade polcies and practices meet the relevant criteria, the USTR must place that country on a list of countries with "excessive and unwarranted trade surpluses." That country then is subject to further negotiations and actions, as described in detail in the explanation section above.

Section 119 gives the USTR two months (with a possible 2-month extension) to negotiate an agreement with an excessive and unwarranted surplus country which would achieve the surplus reduction goals for that country. Such an agreement could contain provisions which substantially open the foreign market through the elimination of unfair barriers or policies; or which increase imports from the United States or limit exports to the United States. In any event, the agreement must ensure that the surplus reduction goals are met. If the USTR fails to reach an agreement, the President is required to take any of a broad range of possible actions which he considers necessary or appropriate to achieve the surplus reductions goals with respect to the country concerned.

The Committee recognizes that a 2 to 4 month time period for negotiation places intense pressure on both the USTR and on the U.S. trading partners concerned to reach a satisfactory agreement quickly. Indeed, that is the Committee's clear intent. Trading partners which have amassed large surpluses at the expense of the United States are being put on notice that they must act swiftly to remedy the situation; failure to do so means that they leave the choice to the President as to the means by which their unwarranted trade surpluses will be remedied.

It should be noted here that among the actions which the President may take is to negotiate agreements, including, but not limited to, orderly marketing agreements. Therefore, the close of the 2 (or 4) month negotiating period provided to the USTR does not completely foreclose the option of further negotiations. Continuing to negotiate, however, does not obviate the need for the excessive and unwarranted surplus country to achieve the specified surplus reduction goals.

The Committee believes it is important to provide the President with as much flexibility as possible in fashioning the appropriate response to a country which fails to agree to surplus reduction. The actions authorized by section 119 provide such flexibility, including the possibility of actions to be taken domestically to improve the international competitive position of U.S. firms. If the actions taken by the President do not achieve the surplus reduction goal for that year, the President is required to impose quantitative limitations on imports from the country concerned (either selectively or across-the-board) the following year to assure that the goal is met for that year. In determining what actions to take, the President may want to avoid taking actions with respect to products already covered by bilateral agreements.

Section 119 sets forth two conditions under which the President may waive certain requirements of the section. In the first instance, the President is authorized to reduce a country's surplus reduction goals due to its balance of payments difficulties and the significant economic harm which would result from its efforts to meet the goal. The Committee views this language as an important safeguard for countries which may meet all the criteria of the bill as excessive and unwarranted surplus countries but whose balance of payments situation is such that more harm than good might result from the inflexible imposition of a surplus reduction goal.

Section 119 also authorizes the President to forego taking action against an excessive and unwarranted surplus country if he determines that such action "would cause substantial harm to the national economic interest of the United States." This waiver does not eliminate the application of the deficit reduction goals to such country or the requirement for bilateral negotiations. The Committee intends that the Presidential waiver provided for in this second instance be used only in those cases in which the President has clear reason to believe that substantial harm to U.S. economic interests will in fact result from his actions. The Committee views the Congressional disapproval provision as adequate protection against the President's use of his waiver authority in circumstances which do not seem warranted. In addition, whenever the waiver authority is used, the President must develop an alternative plan of action for otherwise achieving the fundamental purposes of section 119. This requirement also should serve to guard against the possibility that the President will use his waiver authority to thwart the purposes of this section.

SECTION 120. CONFORMING AMENDMENTS AND EFFECTIVE DATE

Section 120 of the bill contains various conforming changes and effective dates for the amendments made in Chapter 1 of Title III of the Trade Act of 1974 by this Act. Unless otherwise specified, the amendments take effect on the date of the enactment of this Act.

The amendments made by section 112 to section 301 authority and the time limits for Presidential action and by section 114(d) to the recommendation procedures apply to petitions filed and investigations self-initiated under section 302 after the date of enactment and to cases pending on the date of enactment if the USTR has not made a recommendation to the President under section 304 as of that date.

Amendments made by paragraphs (1), (2) and (4) of section 116 concerning USTR determinations apply to petitions filed, investigations self-initiated, and cases pending on or after the date of enactment if the USTR has not made a recommendation to the President as of that date. The amendments made by paragraph (3) of section 116 to the time limits for USTR recommendations to the President apply to petitions filed or investigations self-initiated on or after the date of enactment.

Chapter 2—International Trade in Telecommunications Products and Services

Present law

There is no law currently in force dealing specifically with international trade in telecommunications products and services. Section 301 of the Trade Act of 1974 may be used to address certain unfair foreign trade practices affecting telecommunications trade. However, Chapter 2 provides authority to deal in a comprehensive way with international trade barriers faced by the U.S. telecommunications industry.

Explanation of provision

Chapter 2, The Telecommunications Trade Act of 1986, contains the following provisions.

SECTION 121. SHORT TITLE

Section 121 provides that this Act may be cited as the "Telecommunications Trade Act of 1986."

SECTION 122. FINDINGS AND PURPOSES

Section 122 sets forth six Congressional findings that rapid growth in the world market for telecommunications products and services will continue for several decades; the United States can improve prospects for its exports and technological leadership through a program to achieve an open world market; most foreign markets have extensive government intervention which adversely affects U.S. exports, investment, and employment; the open U.S. market has resulted in a dramatic growth in imports and a growing imbalance in competitive opportunities; and unless the imbalance is corrected by achieving fully competitive market opportunities for U.S. telecommunications products and services in foreign markets, the United States should avoid granting continued access to foreign products and services in telecommunications and other areas.

Section 122 also sets forth three purposes of the Act: (1) to foster the economic and technological growth of and employment in the U.S. telecommunications industry and all U.S. persons who benefit from a high quality telecommunications network; (2) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and (3) to achieve a more open world trading system for telecommunications products and services through negotiation and achievement of fully competitive market opportunities for U.S. telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

SECTION 123. NEGOTIATING OBJECTIVES

Section 123 sets forth six primary negotiating objectives and seven secondary negotiating objectives for the purposes of section 124, which requires the USTR to establish specific negotiating objectives on a country-by-country basis.

Section 123(a) sets forth six primary negotiating objectives, which are:

(1) The nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services that are owned, regulated, or controlled by foreign governments.

(2) Assurances that any requirement for the registration of telecommunications products which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet standards established by the foreign country for preventing harm to the network or network personnel.

(3) Transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products.

(4) The ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutal recognition of type approval.

(5) Access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers.

(6) Monitoring and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

Section 123(b) sets forth seven secondary negotiating objectives, which are:

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, dumping, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services; and

(7) monitoring and dispute settlement mechanisms to facilitate compliance with telecommunications trade agreements.

SECTION 124. INVESTIGATIONS OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS

Investigations.—Section 124(a)(1)(A) requires the USTR, within six months of the date of enactment, to undertake and complete an investigation of foreign countries with a substantial potential market for U.S. telecommunications products and services. The purpose of the investigation is to identify and analyze those acts, policies, and practices in each country which deny fully competitive foreign market opportunities to the telecommunications products and services of U.S. firms.

Under section 124(a)(2), the USTR may exclude any foreign country from the required investigations, if the USTR determines that the potential market in that country for U.S. telecommunications products and services is not substantial. However, countries excluded from investigation for this reason must be reviewed annually by the USTR as provided by section 124(c). If the USTR considers that country's potential market to be substantial, he must undertake and complete, within 6 months, an investigation to identify and analyze those acts, policies, and practices which deny fully competitive foreign market opportunities for U.S. firms.

Investigations by petition from interested parties or by self-initiation also may be undertaken by the USTR under section 124(b). Such investigations must be completed within 6 months of the date on which they were commenced, in the case of investigations by self-initiation; or within 6 months of the date on which a petition is filed.

The USTR is required under section 124(d) to report to the House Committee on Ways and Means and the Senate Committee on Finance on the investigations undertaken under this section. Each report must be submitted within 30 days of the completion of the investigation.

Trade negotiating objectives.—Section 124(a)(1)(B) requires the USTR to establish specific primary and secondary negotiating objectives, drawing from the list of such objectives set forth in section

123, which should be pursued in negotiations to obtain fully competitive market opportunities in foreign countries for telecommunications products and services of U.S. firms. The USTR shall establish these negotiating objectives on basis of the analysis described above. The USTR also shall take into consideration: the needs of the affected U.S. industry in that country; the competitiveness of U.S. industries in domestic and world markets; the progress being made to expand market opportunities under existing agreements or ongoing negotiations; and the availability of appropriate incentives and effective remedies.

SECTION 125. ACTIONS BY THE PRESIDENT IN RESPONSE TO INVESTIGATIONS BY TRADE REPRESENTATIVE

Section 125(a) requires the President, upon completion of the USTR's investigations under sections 124(a)(1)(A) (mandated by the bill) or 124(b) (by petition or self-initiation) to enter into negotiations with countries which were identified during the investigation and denying fully competitive market opportunities. The purpose of the negotiations is to enter into bilateral or multilateral agreements which achieve the specific primary and secondary negotiating objectives that were established by the USTR under section 124(a)(1)(B).

The negotiating period set forth in section 125(c) provides 18 months from the date of enactment for the President to enter into agreements with countries identified by the USTR during his investigation. The President may request up to two one-year extensions of the negotiating period. To do so, he must submit a bill 90 days prior to the expiration of the negotiating period and a statement that: substantial progress is being made in negotiations with the country concerned; and further negotiations are necessary to reach an agreement which meets the specific primary and secondary negotiating objectives established with respect to that country. Such requests will be considered by Congress under the "fast-track" procedures of sections 102 and 151 of the Trade Act of 1974.

If the President is unable to enter into a trade agreement with a foreign country within 18 months after the date of enactment (or longer, as approved by Congress), section 125(b)(1)(A) provides that the President *shall* take whatever actions authorized by the bill that are necessary and appropriate to achieve the purposes of the *primary* objectives not covered by the agreement. Section 125(b)(1)(B) provides that the President *may* take whatever actions authorized by the bill that are necessary to achieve the *secondary* objectives not covered by the agreement.

Section 125(b)(2) requires that any actions taken by the President against the goods or services of a foreign country be directed first at telecommunications products and services from that country.

Section 125(b)(3) authorizes the President to terminate, withdraw, or suspend trade agreements; take any action under section 301 of the Trade Act of 1974; prohibit the Federal Government from purchasing telecommunications products of a specified country; increase domestic preferences or suspend waivers of domestic preferences with respect to Federal government telecommunications purchases (or other products in the case of suspension of waivers);

deny Federal funds or credits for purchases of telecommunications products of a specified foreign country; and suspend GSP benefits on articles from specified foreign countries.

With respect to the authority to terminate, withdraw, or suspend trade agreements, the President is authorized under section 125(b)(4) to increase the rate of duty on products of the country concerned up to the rates set forth in column 2 of the Tariff Schedules of the United States (TSUS). Those rates are to apply to products imported immediately after the termination, withdrawal, or suspension of an agreement takes effect.

In order to ensure the sanctity of contracts, section 125(b)(5) specifies that actions taken by the President under section 125(b)(3) will not affect any binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party. Section 125(b)(6) provides that any action taken by the President under section 125(b)(3) is subject to approval by Congress under "fast-track" procedures.

Section 125(d) provides that the President may modify or terminate any action taken against a country only if that country enters into a trade agreement which achieves the objectives established by the USTR for that country. The President shall inform the House Committee on Ways and Means and the Senate Committee on Finance promptly of any such modification or termination.

SECTION 126. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE

Section 126(a) defines "trade agreement" as (1) a trade agreement entered into under section 125 that is in force with respect to the United States, and (2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of enactment of this Act.

Section 126(b) requires the USTR to conduct annual reviews to determine whether any act, policy, or practice of a country with which a telecommunications trade agreement has been reached: (a) is not in compliance with the terms of the agreement; or (b) otherwise denies fully competitive market opportunities within the context of the terms of the agreement. In his review, the USTR is directed under section 126(c)(1) to:

> Consider any evidence of actual patterns of trade (including United States exports of telecommunications products to a foreign country and sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

The USTR is required under section 126(c)(2) to consult with the International Trade Commission with regard to "actual patterns of trade."

If the USTR determines that a country's acts, policies, or practices violate a telecommunications trade agreement or otherwise deny fully competitive market opportunities under the agreement, section 126(d) requires him to take whatever authorized actions that are necessary to: (a) fully offset the foreign act, policy, or practice, and (b) restore the balance of concessions between the United States and the foreign country in telecommunications trade. The USTR may not take action against a country with a trade agreement in existence on the date of enactment before the President has taken action against any other country under section 125(b)(3).

Section 126(e) authorizes the USTR to terminate, withdraw, or suspend trade agreements or take any action under section 301 of the Trade Act of 1974. Actions must be directed first at telecommunications products and services. If all feasible actions have been taken against telecommunications products and services, and if the applicable objectives established with respect to that country have not been achieved, then, and only then, may actions be directed against other products and services.

Section 126(e)(4) provides that any actions taken by the USTR are subject to "fast-track" Congressional consideration. Section 126(f) specifies that actions taken by the USTR will not affect binding obligations entered into before the date of enactment of this bill to which any U.S. citizen or national is a party. Section 126(g) provides that the USTR may modify or terminate any action taken under this section only if he determines that the foreign country concerned has taken appropriate remedial action regarding the act, policy, or practice concerned. The USTR is required under section 126(h) to promptly inform the House Committee on Ways and Means and the Senate Committee on Finance of any such modification or termination.

SECTION 127. CONSULTATIONS

Section 127 requires that the President and the USTR consult with the Secretary of Commerce and other members of the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; with the private sector advisory committees established under section 135 of the Trade Act of 1974; and with other interested parties in the course of investigations, in the establishment of negotiating objectives, and in determining appropriate action. In addition, this section requires the President to consult closely with appropriate committees of Congress on all aspects of the negotiations.

SECTION 128. GENERAL TRADE AGREEMENT AUTHORITY

Section 128 provides general trade agreement authority allowing the President to conclude telecommunications trade agreements under section 125(a). Section 128(a) authorizes the President, during the 42-month period following the date of enactment, to enter into trade agreement to achieve the primary and secondary objectives established by the USTR. Section 128(b) provides that agreements involving U.S. concessions are to be treated as trade agreements subject to "fast-track" legislative procedures. The President is authorized to implement through proclamation any trade agreement that provides solely for unilateral concessions by a foreign country to the United States. Under section 128(c), the President is authorized to extend agreement benefits and obligations to all countries or just to countries which are parties to the agreement. In addition, the President may choose whether or not to apply the agreement benefits and obligations uniformly to all parties.

SECTION 129. COMPENSATION AUTHORITY

Section 129(a) authorizes the President to enter into agreements granting new U.S. concessions as compensation to a foreign country for action taken against it, if that action is found to violate U.S. international obligations, including obligations under the General Agreement on Tariffs and Trade (GATT). Section 129(b) provides that agreements reached under this section are subject to Congressional approval under "fast-track" procedures.

SECTION 130. DEFINITION OF TELECOMMUNICATIONS PRODUCT

Section 130 defines "telecommunications product" in terms of classification numbers from the Tariff Schedules of the United States (TSUS).

SECTION 131. INTERNATIONAL OBLIGATIONS

This section provides that nothing in the Act shall be construed to require the President and the Congress to violate U.S. legal obligations, including GATT obligations.

Reasons for change

Findings and purposes

The findings and purposes (section 122) reflect the Committee's concern over the tremendous imbalance in market access for telecommunications goods and services that exists between the United States and other countries. The increased deregulation of the U.S. market since the 1960s and before, capped by the court-ordered divestiture by American Telephone and Telegraph (AT&T) of its local operating companies on January 1, 1984, has resulted in a U.S. market virtually devoid of barriers to the entry of foreign competitors. This market openness is not viewed by the Committee as a negative feature of the U.S. market. The Committee has no intention of suggesting that a more protected market should be reintroduced in the United States. Rather, it is the view of the Committee that vigorous efforts should be made by the United States to achieve more open markets in other countries. Such efforts should be undertaken with a sense of urgency and should not await the conclusion of any multilateral trade negotiations, which traditionally proceed at a relatively slow pace. The problems confronting the U.S. telecommunications industry, coupled with the importance of that industry to the United States economy, warrant more immediate attention.

The U.S. telecommunications industry is the largest in the world, accounting for nearly half of worldwide sales in 1985. The U.S. and world markets for telecommunications products and services have grown at very healthy rates in recent years and are projected to continue doing so in the coming years. Deregulation and technological advances are significant spurs to rapid growth in the industry.

According to a 1984 study by the U.S. International Trade Commission, the U.S. industry retains a strong technological lead over industries in other countries in most areas of the higher technology spectrum. U.S. competitiveness in such low-technology items as handsets has seen steady erosion due to a variety of factors, however, and imports of such products have enjoyed strong growth. At the same time, due to pervasive barriers in major foreign markets, U.S. producers have not been able to expand their exports as much as would have been the case in the absence of those barriers. Thus despite a strong technological lead in most product areas, the U.S. industry has seen a once-healthy trade surplus shift to a sizable deficit in a few short years and its share of the U.S. market decline gradually. The U.S. balance of trade in telecommunications equipment shifted from a surplus of about $800 million in 1981 to a deficit of $1.3 billion in 1985.

While the strong dollar has been a major factor in the overall loss of U.S. competitiveness in international trade, the problems confronting the U.S. telecommunications industry appear to go beyond that of dollar strength alone. Despite the competitive disadvantage of a strong dollar, U.S. producers have succeeded in increasing their exports steadily, if slowly, in recent years. U.S. exports of telecommunications equipment in 1981 were $1.9 billion; in 1985 they were nearly $2.5 billion. U.S. producers have continued competing successfully against their strongest competitors from Europe, Canada, and Japan in third country markets—particularly developing countries—even in the face of the strong dollar. The erosion in the U.S. trade balance in telecommunications equipment has stemmed from the sharp growth in imports—from $1.1 billion in 1981 to $3.7 billion in 1985.

In the area of telecommunications services, United States firms are among the world leaders in terms of competitive potential. However, in services trade as in product trade, foreign country restrictions on access to the basic telecommunications network, on the international flow of data, and other barriers severely hamper the ability of U.S. firms to compete internationally. With the world market in telecommunications services approaching an estimated $300 billion, removal of foreign barriers to trade is imperative.

The telecommunications industry, taken by itself, is of major importance to the maintenance of a vibrant, technologically advanced economy. From the telephone switching apparatus and cellular telephones to optical fibers and communications satellites, the heart of a modern economy is bound closely to the telecommunications industry. When viewed more broadly, the central role of the telecommunications industry becomes even more apparent. Advancements in such industries as banking, data processing, tourism and travel, and a host of other industries would not be possible without ready access to a low-cost, highly efficient telecommunications network.

Yet the U.S. lead in telecommunications technology should not be taken for granted. Continued loss of market share in the United States, coupled with the inability of most U.S. firms to penetrate markets in Europe, Canada, and, until recently, Japan, carry the risk of steady erosion of that lead. For these reasons, the Committee believes that action is needed to address the problem of closed telecommunications markets in most of the world's advanced industrial countries. Such action should be taken at the earliest possible date. The open U.S. market would serve as the greatest possible leverage in negotiations to open foreign markets. The Telecommunications Trade Act provides for judicious use of that leverage.

The findings and purposes section refers to the need to achieve fully competitive market opportunities for U.S. exporters and their subsidiaries. By referring both to exporters and subsidiaries, the Committee's intention is to clarify that a major purpose—and indeed, a major measure of success—of agreements negotiated under the Act is to eliminate barriers to U.S. exports. At the same time, the Committee recognizes that one element of foreign market openness is the related sales and services provided by U.S. subsidiaries, and any assessment of foreign market openness should take such activities into account.

The term "fully competitive market opportunities" reflects the overriding purpose of the Act, which is to open foreign markets so that U.S. firms have the opportunity to compete fully and fairly with domestic firms in those markets. Such foreign market openness will provide increased opportunities for U.S. exports and for export-related employment in the telecommunications industry.

The Committee has no intention of suggesting that the standard of "fully competitive market opportunities" means that foreign telecommunications markets must be a mirror image of the U.S. market. This issue has been the source of intense controversy in discussions about the bill, and the Committee wishes to put such fears to rest. The bill contains no stated or implied requirement for the denationalization of telecommunications monopolies or for the elimination of vertical integration in foreign telecommunications markets. In the area of standards, while an overall standard of "harm to the network" may be adopted by a foreign country, the Committee does not expect all of that country's telecommunications standards (such as those relating to maintenance of the network, signal strength, etc.) to conform to those that exist in the United States. The same is true for other objectives set forth in the bill.

However, deregulation and divestiture of the telecommunications market in the United States has provided substantial benefit to foreign producers of telecommunications equipment. The Committee believes that U.S. producers should enjoy access to foreign markets which is comparable to foreign access in the U.S. market. The areas where such access is regarded as particularly important are spelled out in the bill's primary objectives—nondiscriminatory procurement, open and transparent standards-setting processes, nondiscriminatory access to the basic telecommunications network, and so on. In sum, achievement of the specific negotiating objectives established for a foreign country should have the effect of correcting the imbalance in competitive opportunities between the United States and that country in the area of telecommunications trade.

Investigations

The purpose of the investigations required of the USTR under section 124 is to identify and analyze those acts, policies, and practices in each country which deny fully competitive foreign market opportunities to the telecommunications products and services of U.S. firms. It is the Committee's intention that the USTR identify and analyze a list of priority problems in each country which have the overall effect of denying fully competitive foreign market opportunities. The language in this section should not be construed as requiring the USTR to develop a comprehensive "laundry list" of problems in each country, including items of low priority or with very limited impact on foreign market access. The list developed here should provide the basis for establishing a priority list of negotiating objectives under this section.

As to investigations by petition or by self-initiation, it is the Committee's intention that such investigations apply only to those acts, policies, or practices which deny fully competitive market access, as is required for investigations mandated by the Act. The USTR should not undertake an investigation on the basis of frivolous or unimportant assertions by a petitioner which allege or identify acts, policies, or practices with a very limited impact on foreign market access.

Trade negotiating objectives

Section 124 also requires the USTR to establish specific negotiating objectives with respect to foreign countries, drawing from the primary and secondary negotiating objectives set forth in section 123. The six primary negotiating objectives are immediate objectives which should be sought in each bilateral negotiation, based on the USTR's judgment, in close consultation with the affected industry, of the situation in that country and the needs of U.S. industry in that country—i.e., which barriers are the most significant impediments to obtaining fully competitive market access—and how much negotiating leverage the USTR feels is available to aid in achieving those objectives. Such leverage could take the form of U.S. countermeasures or incentives in the form of additional U.S. concessions. It is the view of the Committee that few, if any, additional trade concessions should be made to other countries as part of agreements reached through negotiations. The U.S. market for telecommunications equipment and services is virtually completely open to foreign competition. Continued access to the U.S. market should serve as sufficient incentive to foreign countries to open their telecommunications markets to U.S. firms.

The seven secondary negotiating objectives also represent important goals for negotiation. However, unlike the primary objectives, the secondary objectives represent those longer-term goals which are envisioned for international trade in telecommunications in order to bring such trade more fully into the GATT system. As a result, while the Committee encourages the USTR to seek to obtain these objectives in negotiations with other countries, failure to achieve these secondary objectives does not require the same degree of response by the President under section 203 as does failure to achieve the primary objectives.

In establishing the specific primary and secondary negotiating objectives for each country, the USTR is required to consult with the private sector and any interested parties. The USTR also should keep the House Committee on Ways and Means and the

Senate Committee on Finance informed of developments in this area. However, it is not the intent of this Act that the USTR should make its list of negotiating objectives available beyond the private sector advisory committees established under section 135 of the Trade Act of 1974; the Trade Policy Committee established under sections 242(a) of the Trade Expansion Act of 1962; the Congress; or other interested parties, such that the foreign country concerned is aware in advance of the U.S. "bottom-line" negotiating objectives with respect to that country. To do so would minimize the possibility of obtaining additional concessions from that country.

Due to the importance placed in the Act on the specific negotiating objectives, a fuller explanation of the Committee's intent in this area is warranted.

Taken as a whole, the primary negotiating objectives set forth in section 123 represent those minimum market conditions which should exist in a foreign country in order to give U.S. firms the opportunity to compete fully and fairly against domestic firms in that market. The primary negotiating objectives include the following items, as indicated in the explanation section above.

(1) The nondiscriminatory procurement of telecommunications products and related services by foreign entities that provide local exchange telecommunications services that are owned, regulated, or controlled by foreign governments.

This objective is intended to clarify the coverage of this Act to include not only such state-owned telecommunications monopolies as exist in France and a number of other European countries, but also such entities as Nippon Telephone and Telegraph (NTT) in Japan, British Telecom (BT) in the United Kingdom, and Bell Canada. These governments maintain de facto control over, or direction of, the policies and practices of these telecommunications providers; and, in the case of Japan and the United Kingdom, currently hold large percentages of those firms' outstanding stock—100 percent in the case of Japan and 49.8 percent in the case of the United Kingdom.

This objective is not intended to cover truly private foreign firms which have entered their domestic markets in competition with such government-controlled entities as those listed above by way of example. This objective also is not intended to require the divestiture of state-owned monopolies or state-controlled entities such as those cited above. Rather, it is the desire of the Subcommittee to see that U.S. firms have an opportunity to supply equipment and such ancillary services as maintenance and repair on an equal footing with domestic producers of telecommunications equipment in foreign markets.

(2) assurances that any requirement for the registration of telecommunications products which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

be limited to the certification by the manufacturer that the products meet standards established by the foreign country for preventing harm to the network or network personnel.

The purpose of this objection is to promote the common standards of "harm to the network" in assessing a product's acceptability for attachment to local telecommunications networks in foreign countries. The purpose also is to indicate that U.S. firms should be permitted to freely market customer premises equipment, if that equipment meets the requisite standards and is registered with the proper agency or authority in a foreign country. Many foreign countries impose needlessly complex standards, and impose restrictions on the marketing of certain equipment even if properly registered, which have the effect—international or not—of discouraging competition from foreign suppliers. West Germany, for example, considers the first telephone or modem purchased by the customer to be a part of the telecommunications network and not customer premises equipment. Private firms, therefore, cannot offer these "first-purchase" items for sale.

The Committee also believes that allowing manufacturers to "self-certify" that their equipment meets the requisite standards in each foreign market—as is the case in the United States with respect to telecommunications equipment, automobiles, and other products—would greatly facilitate international trade in telecommunications products.

(3) Transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products.

(4) The ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approval.

The Committee believes that these two objectives are important elements of a truly open market. The process of setting standards should be open to foreign, as well as domestic, firms, to ensure that standards are not crafted as an impediment to import competition. Foreign firms also should have ready access to the standards which apply to products and services to be sold in the local market. The ability to have telecommunications equipment approved and registered by type, as is done in the United States, would be a vast improvement over the practice followed in many countries, whereby each piece of equipment sometimes must be approved and registered on an individual, piece-by-piece basis. Such procedures not only are cumbersome but act as a nontariff barrier as well.

The Committee also encourages, where appropriate, efforts by U.S. negotiators to seek the mutual recognition of type approval among parties to a telecommunications trade agreement which provides for type approval of equipment. Mutual recognition of type approval would be of particular significance in the case of a U.S. agreement with a bloc of countries, such as the European Community (EC). Mutual recognition would allow a manufacturer obtaining type approval in one country to have that type approval accepted in another country. The concept does not require that participating countries' telecommunications networks have identical physical characteristics, although it would require harmonization of those countries' standards relating to "harm to the network". Because this one element of the bill's primary objectives is encouraged by the Committee, but is not required by the bill, failure to pursue or achieve mutual recognition of type approval would not be cause for mandatory countermeasures by the President.

(5) Access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms and conditions (including non-discriminatory prices) for the provision of value-added services by United States suppliers.

Value-added service is an area of very strong U.S. competitiveness and promises to be an area of very rapid world growth in the future. This objective is intended to assure that U.S. providers of value-added services (such as data processing, bank check-clearance, consumer credit-check services, etc.) can gain access to foreign countries' basic telecommunications networks on terms, conditions, and prices which are comparable to those enjoyed by domestic service providers.

(6) Monitoring and effective dispute settlement provisions regarding matters referred to in paragraphs (1) through (5).

This objective is regarded by the Committee as essential in assuring that any problems or disputes which may arise in the areas outlined above can be detected and resolved in a timely fashion.

Action by the President

Section 125 requires the President to negotiate with countries identified by the USTR during his investigation, with the aim of entering into agreements which achieve the specific primary and secondary negotiating objectives established by the USTR.

The provision authorizing a one-year period of initial negotiations following the six-month investigation period, and two possible extensions of one year each in these negotiations, enables the Congress to maintain strong oversight over the negotiations but avoids the inflexibility of a fixed deadline for either reaching agreement or imposing trade remedies. However, if Congress does not approve a request for an extended negotiating period (or if the maximum allowable 42-month period authorized for negotiations is close to expiration), and a satisfactory agreement has not been reached, then appropriate remedies would have to be put into effect against the country concerned at the end of the negotiating period. Since both the request for an extension of the negotiating period and any trade remedies which the President intends to impose require approval of Congress under "fast-track" procedures, the President would have to submit a package of possible trade actions at the same time that he submits the request for extension of the negotiating period.

The overall purpose of the primary objectives is to achieve fully competitive market opportunities for U.S. firms in foreign markets. A determination as to whether or not fully competitive market opportunities have been achieved in an agreement, and thus whether action is necessary, will be a judgment made by the President in close consultation with parties specified in section 127 of the bill—the Trade Policy Committee established under section 242(a) of the Trade Expansion Act of 1962; and any interested parties from the private sector, including appropriate committees established under section 135 of the Trade Act of 1974. These private sector advisory committees include representatives of industry and labor.

It is not the Committee's intention that each primary objective must be met in full in order for a judgment to be made that an agreement achieves fully competitive market opportunities in a foreign country. Rather, it is the Committee's intention that the agreement, taken as a whole, is sufficient to achieve that objective. The consultation process between the President and those firms that are seeking access to the foreign market in question, coupled with the requirement that the Congress approve any agreement requiring U.S. concessions, should serve as an adequate safeguard against the possibility that the administration would accept under this standard a patently inadequate agreement.

The reason for giving the President discretion as to whether or not to take action when the agreement does not achieve the secondary negotiating objectives is two-fold. First, because the secondary objectives constitute goals of a longer term, more multilateral nature than do the primary objectives, it is felt that the President should not have to take action against a country if those objectives are not met in a bilateral context. Moreover, some of the acts, policies, and practices referred to in the list of secondary objectives—such as subsidization, dumping, or the violation of intellectual property rights—can be remedied by other U.S. trade laws. Second, the Committee wants to avoid creating a disincentive to the USTR's selecting more negotiating objectives than those set forth in the list of primary objectives. This might be the case if the President were *required* to take action in the event that the secondary objectives were not met.

In determining what actions to take against a country, the President should take into account the nature and extent of the marekt to which fully competitive access is being denied; the ability of U.S. firms to supply that market; and the potential effectiveness of measures available to correct the imbalance in competitive opportunities. If the segment of the foreign market for which fair and equitable access has not been achieved is a segment in which U.S. firms are not as competitive as firms in third countries; or if the President lacks any viable means of inducing the foreign country to open that market segment; then it would not necessarily be desirable to take action against the country concerned, or to offer additional U.S. concessions, when the benefits of market opening might flow to firms in other countries.

Section 125 of the Act requires that any actions taken by the President against the goods or services of a foreign country be directed first at telecommunications products and services from that country. Only then can the President take action directed at other products and services. The purpose for this requirement is to exert the maximum possible pressure against foreign suppliers of telecommunications products and services who are the chief beneficiaries of the open U.S. market and the protected home market.

The President is authorized to select from a broad range of measures in order to increase his ability to tailor any actions to the telecommunications trade situation characterizing each country. The President may use the flexibility provided by the options to impose those measures that will have the most profound effect on the foreign country concerned, to moderate the cost of compensation, or to avoid or lessen the impact on domestic users of imports from that country. In his consultations with interested parties from the private sector, including representatives of industry and labor, the President should, among other things, consider any information received as to the effects of proposed actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products. Based on such information, and to the extent consistent with the objectives of the bill, the President should attempt to minimize any adverse effects of U.S. actions on such parties and may be selective as to the products covered by any actions. Such consideration is important in order to avoid causing harm to U.S. interests which may be greater than the benefits to be obtained by selecting a particular product for action. This flexibility does not, however, alter the requirement that the President's actions be of sufficient magnitude to achieve the purposes of the primary and, as appropriate, the secondary objectives established with respect to that country.

USTR review of trade agreement implementation

Section 126(a) defines "trade agreement" as (1) a trade agreement entered into under section 125 that is in force with respect to the United States, and (2) a trade agreement regarding telecommunications products or services that was in force with respect to the United States on the date of enactment of this Act. The only country that currently falls into the second category is Japan. It is the intent of this section that the USTR's review and enforcement authorities apply not only to agreements involving U.S. concessions and approval by the Congress, but also to agreements which involve only unilateral concessions on the part of a foreign country.

The overall purpose of section 126 is to establish a mechanism to enforce trade agreements involving telecommunications products and services. In monitoring foreign counties' compliance with agreements, the USTR is required to consider not only compliance with the letter of the agreements but also of the spirit, which is to open foreign markets and expand the opportunities for world trade. It is for this reason that the USTR is directed to consider the "actual patterns of trade" which emerge between the United States and a foreign country following conclusion of an agreement, taking into account the international competitive position and export potential of the relevant U.S. products and services. This provision is intended to discourage foreign countries from frustrating the overall objective of fully competitive market opportunities through measures or actions which do not necessarily violate the terms of the agreement as written but which do not permit U.S. firms to enjoy the rewards of a truly open market.

The term "services" as used in the phrase "sales and services related to those products" exported from the United States (as used in section 126(c)—"Review Factors") is intended to cover not only installation, maintenance, and other ancillary services but also such services as value-added networks, which are a large and growing business for U.S. firms. The term "sales" as used in the phrase is intended to cover sales of products exported from the United States and any local modification, adaptation, and other manufacturing which is done to render a piece of equipment complete for use by the customer in a foreign country. The term "sales" is not intended to include equipment manufactured by a U.S. subsidiary in a third country and sold in the foreign country of immediate concern.

As noted above, in assessing a foreign country's compliance with an agreement, the review factors direct the USTR to consider "patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services". The role of U.S. subsidiaries in this assessment warrants further clarification. A country would not be considered as meeting the objectives of a telecommunications agreement simply by allowing U.S. subsidiaries to manufacture locally while at the same time maintaining barriers to competitive U.S. exports. However, if a product produced in the United States would not be competitive if exported to a foreign country, but that same product produced locally by U.S. subsidiary in that country is competitive, the absence of U.S. exports of that product should not be itself be taken as an indication of a closed market. For example, the high cost of shipping entire reels of fiber optic cable in many cases renders the landed cost of such cable too high to compete effectively with cable produced locally in a foreign market. If a U.S. subsidiary is producing and competing successfully in a foreign market, and there are no significant barriers to U.S. exports, the USTR would not be required to declare that the foreign country is denying U.S. firms fully competitive market opportunities. Similarly, if a particular U.S. export is competitive, yet U.S. firms simply choose not to export to a foreign country for purely commercial reasons, and if there are no significant barriers to exports, the foreign country in question would not be an appropriate object of U.S. countermeasures.

Judgments as to the factors underlying the patterns of trade which flow from an agreement will have to be made on a country-by-country basis, relying heavily on consultations with private industry, the International Trade Commission, and other interested parties.

It is the intent of this section that the USTR attempt to tailor any actions to the telecommunications trade situation characterizing each country, for the reasons outlined with respect to actions taken by the President. Similarly, the USTR should, among other things, attempt to minimize any adverse effects of his actions on U.S. firms and workers engaged in the distribution, marketing, and use of the affected products, as provided for with respect to the President's actions. However, action by the USTR nonetheless must be sufficient to fully offset the act, policy, or practice in question and restore the balance of concessions in telecommunications trade between the United States and the country concerned.

Nothing in this Act should be construed to require that actions by the President or the USTR be directed against U.S.-based subsidiaries of foreign firms.

Trade agreement authority

Section 128 provides the general trade agreement authority which is necessary to allow the President to conclude telecommunications trade agreements under section 125(a). It is not to be read as providing separate telecommunications negotiating authority which is free of the requirements of other provisions of the Act. The trade agreement authority provided for in section 128 is subject to all the conditions and limitations set forth in section 125(c), relating to the negotiating period available for reaching telecommunications trade agreements.

Compensation authority

Section 129(a) provides that the President may grant compensation to foreign countries for actions taken by the President or the USTR, subject to the condition of section 129(a)(3) that "such action is found to be inconsistent with the international obligations of the United States, including the obligations under the General Agreement on Tariffs and Trade." Section 129(a)(3) is addressed primarily at those cases in which U.S. action is taken to restore the balance of concessions in the face of a telecommunications trade agreement violation by a foreign country. Unless the U.S. action is found to be a violation of U.S. GATT obligations, it would not seem desirable or appropriate to compensate that foreign country for such action.

It is not the intent of this section to require that the President await a decision by the GATT or a GATT panel in all cases before determining whether or not compensation should be awarded to a foreign country. Adequate GATT case law now exists to provide guidance in many cases as to whether or not a U.S. action violates U.S. GATT obligations. In such cases, as soon as U.S. action is taken, the President may submit to the Congress a bill containing the proposed U.S. concessions to be offered as compensation.

In cases for which GATT rules are unclear or for which no GATT case law exists and there is genuine uncertainty as to whether or not U.S. actions violate U.S. GATT obligations, the President should allow the foreign country concerned to pursue its rights under the GATT and should avoid granting new U.S. concessions until a GATT ruling has been made.

Subtitle B—Relief From Injury Caused by Import Competition, Subsidies, Dumping, and Unfair Trade Practices

Chapter 1—Relief From Injury by Import Competition

SECTION 141. IMPORT RELIEF

General Overview of Present Law

Chapter 1 of Title II of the Trade Act of 1974 as amended (commonly referred to as "section 201") contains the standards and procedures for the provision of temporary relief from increased import competition which has resulted in serious injury to a domestic industry. Under section 201, U.S. firms or workers may file a petition with the International Trade Commission (ITC) for temporary import relief. The President, U.S. Trade Representative, Committee on Ways and Means of the House, or Committee on Finance of the Senate may also request such an investigation. The ITC then conducts an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article likely to be directly competitive with the imported article.

If the ITC makes an affirmative injury detemination, it then considers and recommends to the President such action as necessary to prevent or remedy the injury. If the ITC determines that adjustment assistance can effectively remedy the injury, it recommends the provision of such assistance. If the ITC determines that import relief is necessary, it recommends whatever tariff increase or import quota is necessary to prevent or remedy the injury.

The ITC is required to report its findings and recommendations to the President within 6 months of filing of the petition. Within 60 days of receiving such report, the President must provide import relief unless he determines that is not in the national economic interest. The form of import relief which may be provided consists of the following: (1) an increase in, or imposition of, tariffs (not to exceed a rate 50% above existing rates); (2) a tariff-rate quota; (3) quantitative restriction on imports; (4) negotiation of orderly marketing agreements; or (5) a combination of such actions.

Relief is temporary in order to encourage adjustment of the domestic industry to increased import competition. Relief may be provided initially for up to 5 years. To the extent feasible any relief provided for more than 3 years must be phased down beginning the fourth year. An extension of relief may be provided for up to an additional three years.

Transfer of Authority from President to USTR

Present law

Section 202 requires that, within 60 days of receiving an affirmative determination from the ITC, the President must provide import relief, unless he determines that such relief is not in the national economic interest.

Explanation of provision

The bill transfers the decision-making authority from the President to the USTR. The ITC's report on its findings and recommendations would go directly to the USTR, who would then have 60 days to determine whether, and to what extent, import relief is appropriate.

Reasons for change

This change is consistent with numerous other provisions of the bill which transfer the authority for making deteminations under the trade laws to the U.S. Trade Representative. The purpose of these changes is to strengthen the role of the U.S. Trade Representative in being the chief official in the executive branch whose sole responsibility is to look after the international trade interests of the United States. This statutory change in decision-making responsibility is not meant to remove any Presidential power or to reduce the influence of the President in making trade decisions. The U.S. Trade Representative is, after all, an individual chosen by the President to act as his chief trade policymaker and spokesperson. The Committee does not anticipate that the U.S. Trade Representative, who serves at the pleasure of President, will make decisions with which the President disagrees. The Committee does, however, have serious concerns about the degree of control and influence which other members of the executive branch currently have over trade policy decisions made by the President under current procedures. This statutory change is designed to ensure that the Administration official who is solely responsible for the coordination and implementation of U.S. trade policy is directly accountable for determination under U.S. trade laws.

Industry Adjustment Advisory Group

Present law

Present law does not provide for the establishment of an industry adjustment advisory group or for the development of an industry adjustment plan. Petitioners seeking relief, however, are usually requested by the ITC to supply information on what efforts they have made to adjust to import competition and what efforts they intend to make if they receive the relief they seek. Also, in determining whether, and to what extent, to provide import relief, the President must take into account the probable effectiveness of import relief as a means to promote adjustment and the efforts being made or to be implemented by the industry concerned to adjust to import competition.

Explanation of the provision

The bill provides that, upon request of petitioner, the USTR shall appoint an industry adjustment advisory group. The advisory group is to consist of 2–4 representatives of workers, 2–4 representatives of firms (at least one of which must be representative of small business), one representative of communities which are, or will likely be, dislocated by the injury to the domestic industry, one individual who is knowledgeable of the special concerns of consumers of the product, and one representative from each of the Departments of Labor, Commerce, and Agriculture (when an agricultural product is involved). The USTR, or a designee of the USTR, shall chair the advisory group.

The function of the advisory group shall be to prepare an industry adjustment plan which contains:

(1) an assessment of the current problems of the industry (including, but not limited to, an assessment of the ability of firms in the domestic industry to generate adequate capital for modernization of domestic plants and equipment) and a strategy to enhance its competitiveness;

(2) objectives, and specific steps that workers and firms could usefully undertake, to improve the ability of the industry to compete or to assist the industry to adjust to new competitive conditions;

(3) actions which may be taken by the appropriate Federal agencies under existing authority, or under new legislation, to assist in achieving the objectives referred to in paragraph (2) and in remedying the dislocation to workers and communities caused by the injury.

To the extent practicable, the plan shall be designed to ensure that the industry concerned will be able to operate viably after import relief is terminated.

The USTR and, if appropriate, the Secretaries of Labor, Commerce, and Agriculture shall provide appropriate administrative support to each advisory group.

The USTR shall seek to obtain confidential information from firms and unions in the industry on their intended actions to meet the objectives specified in the industry adjustment plan. If such information is obtained, the USTR shall transmit it to the ITC, the Secretary of Commerce and the Secretary of Labor on a confidential basis. The USTR may then condition relief on compliance with the confidential submissions as well as on the more general industry adjustment plan.

If an adjustment plan is prepared by the industry adjustment advisory group, the plan is to be submitted to the ITC within 120 days of initiation of the investigation. If a plan is submitted, ITC shall take the plan into account in recommending a remedy. A copy of any plan submitted shall be attached to the ITC report to USTR. The USTR shall take the plan into account in its determination of whether to provide import relief. The USTR may condition import relief on compliance with such elements of the plan as USTR deems appropriate.

The failure to submit a plan, or the failure to request the establishment of an advisory group, however, shall not be a factor in any determination by ITC or USTR.

Reasons for change

The Committee received considerable testimony during its hearings on the ineffectiveness of section 201 relief in promoting adjustment to import competition. The establishment of an adjustment advisory group, composed of representatives of business, labor, government, communities and consumers, is viewed as a positive step toward making section 201 a more effective adjustment tool.

The basic purpose of this new provision is to provide the industry with an opportunity to develop recommendations of actions that will promote adjustment, and to enable the ITC and the USTR to better analyze the effectiveness of import relief provided under this chapter. Members of the advisory group would be forced to critically analyze the problems (beyond simply import competition) facing the domestic industry, and to develop suggestions as to how the industry can enhance its international competitiveness during the period it is receiving import relief. The group would identify actions which workers, firms, and the government could take to assist the adjustment process. The Committee expects that each member of the advisory group would participate in a constructive manner, with each being willing to do its share to the extent that self-disciplinary or self-help measures are appropriate.

Ideally, the adjustment plan to be developed by the advisory group will represent a consensus view of all members of the group. The Committee recognizes, however, the divergent interests of the various representatives, and realizes that not all members of the group will always endorse every detail of an adjustment plan. Any adjustment plan submitted to the ITC which does not reflect a consensus view should be accompanied by dissenting views which explain the areas of disagreement.

The Committee does expect members of the advisory group to be willing to make certain concessions and commitments regarding actions to be taken during the period of import relief. The Committee does not intend, however, that the process of developing an industry adjustment plan be used to subvert the collective bargaining process for issues properly in the scope of collective bargaining agreements.

Certain concerns regarding potential antitrust violations were raised during the Committee's deliberations on the development of an adjustment plan. The Committee does not expect members of the advisory group to engage in any discussions or share any information which would violate U.S. antitrust laws. The function of the advisory group is to develop an adjustment plan for the industry as a whole; not to share confidential information or to organize a cartel. Any company-specific actions and plans relevant to the adjustment process would be provided by firms and unions to the USTR on a confidential basis.

In addition to objectives and steps which workers and firms could undertake to improve competitiveness or assist adjustment, the adjustment plan should also consider actions which the Federal government can take, either under existing authority or by new legislation, to assist in achieving such objectives and to assist in remedying the dislocations to workers and communities. The role of the Federal government in facilitating the adjustment process is an important and integral one. Depending on the circumstances of the particular industry at issue, certain actions by the Federal government not specifically aimed at regulation of imports may nevertheless assist the industry's efforts to compete more effectively with imports. For example, temporary relaxation of certain administrative standards or regulations, or increased government purchases of a product for U.S. stockpiles, might be appropriate and useful actions. The plan may recommend such actions, even though they are not directly related to imports. Any such actions recommended in the plan, however, are in no way binding on the Federal government or any government agency.

Furthermore, the plan should address actions which the Federal government can take to remedy the dislocations to workers and communities which result from increased import competition. The Committee feels strongly that the Federal government should do all that it can to soften the blow which hits communities and workers when plants close and jobs are lost due to imports. The Committee fully recognizes that the closure of plants and contraction of the industry may be a necessary part of the industry's adjustment process, and does not believe that section 201 should be used to artificially preserve uncompetitive operations or jobs. The government can and should, however, do everything it can to buffer the dislocations and minimize the pain and hardship which fall upon families and communities who are particularly impacted by the adjustment to import competition. In addition to the provision of trade adjustment assistance as authorized under chapters 2 and 3 of the Trade Act, the Committee expects the government officials in the advisory group to consider other programs and actions which might assist community and worker adjustment, such as community assistance programs through the Economic Development Administration, incentives for new businesses to locate in trade-impacted localities, and new or additional job retraining (including on-the-job training) programs. The role of the Federal government should not be limited simply to the granting of import relief.

Overall, and to the extent practicable, the elements of the adjustment plan developed by the adjustment advisory group should be designed to ensure that the industry will be able to operate viably once the import relief is terminated. This does not mean that the industry should be able to operate profitably even if it is uncompetitive. It also does not mean that the industry should be expanding—indeed, it does not even mean that the industry should necessarily be maintained at its current size. The Committee recognizes that certain industries may naturally become less competitive internationally. The role of section 201 import relief and of the industry adjustment plan is to ease the adjustment process so that, when import relief is terminated, whatever domestic industry remains will be a healthy, competitive one.

Emergency Import Relief for Perishable Products

Present law

Under present law, there is no provision generally relating to emergency relief under section 201 for imports of perishable products. Statutory authorities for the Caribbean Basin Initiative (CBI) and the U.S.-Israel Free Trade Area (FTA), however, provide safeguard provisions for emergency relief from imports of perishable products from those countries under fast-track procedures.

Under both CBI (section 213(f) of the Caribbean Basin Economic Recovery Act) and the U.S.-Israel Free Trade Area (section 404 of the Trade and Tariff Act of 1984) petitioners for import relief with respect to perishable products may also file a request with the Secretary of Agriculture for emergency relief. Within 14 days the Secretary, after consultation with the USTR, must determine whether there is reason to believe that a perishable product from a CBI country or from Israel is being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry, and if so, whether emergency action is warranted. Within seven days after receiving the Secretary's recommendation, the President must determine whether to take emergency action. Relief consists of restoring the normal rate of duty on such perishable product pending final action on the import relief petition.

Perishable products are defined so as to include live plants, vegetables, fresh mushrooms, edible nuts or fruits, fresh cut flowers, and concentrated citrus fruits, and are identified specifically in section 404(e) of the Trade and Tariff Act of 1984.

Explanation of provison

The bill adds a new section 209 establishing fast-track procedures and authority similar to those under CBI and the U.S.-Israel FTA for the Secretary of Agriculture to provide emergency relief from imports of perishable products during the course of an import relief proceeding under section 201.

Section 209 would allow the Secretary of Agriculture 20 days in which to make a determination on emergency action. During the 20-day period the Secretary must provide interested parties, including importers, an opportunity to present information and views on the petitioner's request for emergency relief.

Emergency relief may be requested by the petitioner at any time up to 150 days from the date of filing of the section 201 petition. It emergency relief is denied, petitioners may request reconsideration of the request for emergency action any time after 30 days after relief is denied and at intervals of not less than 30 days beginning after reconsideration is first requested.

If emergency relief is provided, any interested party adversely affected by the impositon of emergency relief may request the Secretary to terminate relief on the grounds that emergency relief is no longer warranted due to change circumstances. Such a request for terminatin of relief may not be made, however, prior to 30 days after emergency action is taken. If the request for termination is denied, additional requests for termination for emergency relief may be made at intervals of not less than 30 days until the International Trade Commission submits its report to the USTR.

Emergency relief provided under section 209 may consist of any import relief otherwise authorized under the chapter (i.e., tariffs, tariff-rate quota, quantitative restriction, OMA, or any combination thereof). Perishable products eligible for fast-track emergency relief under section 209 would not be eligible for provisional relief under the critical circumstances provision of the bill.

Section 209 defines perishable products as the same products as under section 404(e) of the Trade and Tariff Act of 1984. The bill further amends section 404(e) to include Chinese goose-berries, TSUS item 149.48 (also known as kiwi fruit).

The bill also makes conforming amendments to the fast-track provisions under CBI and U.S.-Israel Free Trade Agreement to transfer the 7-day override authority from the President to USTR.

Reasons for change

The addition of section 209 providing fast-track procedures for emergency relief relating to imports of perishable products is an extension of the provisions in current law relating to imports of perishable products from CBI countries and from Israel. In approving these provisions, the Committee recognizes the highly sensitive nature of the market for perishable products, and the potential need to take fast action against imports of perishable products pending the outcome of a section 201 proceeding (which may take up to eight months).

The bill's provisions, however, include certain changes from the provisions currently under the CBI and U.S.-Israel FTA. For example, the authority to override the Secretary of Agriculture's recommendation of emergency action is given to the USTR, to be consistent with the bill's general transfer of authority under this chapter from the President to the USTR.

Furthermore, the period of time during which the Secretary of Agriculture must determine whether to take emergency action is 20 days under the new authority, as compared to 14 days under the CBI and U.S.-Israel FTA. The designation of 20 days reflects the fact that the new authority applies to imports of perishable products generally, and not just from one country. In light of the greater amount of data that may be involved and the requirement that interested parties be provided an opportunity to present views, the Secretary is provided additional time to make a determination.

Before making his determination, the Secretary of Agriculture is also required to provide interested parties, including importers, an opportunity to present views and information on whether emergency relief is appropriate. This provision does not necessarily require public hearings, but is designed to ensure consideration by the Secretary of the views of all interested parties who will be affected by the emergency action, before the determination of emergency action is made. The Committee expects no determination of emergency relief to be made simply on the basis of petitioner's allegations.

The volatility of the perishable product market is further reflected in the procedures allowing both petitioners and respondents to request imposition or termination of emergency relief at various points during the import relief proceeding. These procedures are designed to provide procedural due process for all parties in light of the highly sensitive and volatile nature of these markets, and not to give unnecessary or excessive opportunities for parties to reargue the same set of facts and circumstances.

Provisional Import Relief if Critical Circumstances Exist

Present law

No provision.

Explanation of the present provision

The bill adds a new section 202 which allows a petitioner to request provisional import relief on the basis of critical circumstances. Under this provision USTR must make a preliminary determination as to the likelihood that critical circumstances exist, within 30 days. If USTR's determination is affirmative, then it shall order immediate suspension of liquidation of all entries of the merchandise under investigation, and may order the posting of a bond or cash deposit.

In cases where the USTR has determined that critical circumstances exist, the ITC must, in its report to the USTR, make a final critical circumstances determination. If such determination is affirmative, then any import relief provided by USTR must be retroactively applied to the date of initial suspension of liquidation. If the ITC final critical circumstances determination is negative, or if the USTR decides not to provide import relief, then the suspension of liquidation shall be terminated.

Under the provisions of the new section 202, critical circumstances exist when a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such import relief.

Reasons for change

The bill adds a new section 202 to provide an opportunity for industries in which critical circumstances exist to obtain provisional import relief pending the outcome of a section 201 proceeding. In adopting this new provision, the Committee recognizes that in certain cases the injury caused by increased import competition may be so severe or so pervasive, that not imposing any relief until the end of the import relief proceeding (eight months after the filing of the petition) may significantly impair the effectiveness of the import relief in remedying the injury. This may occur because at that later point in time the harm to the industry will have become irreparable, or because the injury which continues to occur during the pendency of the proceeding will significantly impair the effectiveness of the import relief ultimately provided.

Under these circumstances, the provision of import relief at an earlier point in time (prior to the statutory limit for the USTR determination) will serve to alleviate the continuing serious injury to the domestic industry. The bill thus provides for the USTR to order the suspension of liquidation and possible posting of a bond or cash deposit if the USTR determines that there is a likelihood of critical circumstances. If the ITC subsequently makes an affirmative injury determination, and confirms the existence of critical circumstances, the suspension of liquidation would continue. If the USTR provides import relief, the relief would be applied retroactively to the date when suspension of liquidation began. If the USTR decides not to provide import relief, then the suspension of liquidation would be terminated and any bond or cash deposit would be refunded.

The action to be taken in cases involving critical circumstances is suspension of liquidation and potential retroactivity of any import relief ultimately provided. This is to ensure the effectivenss of any import relief ultimately provided, without subjecting imports which are subsequently found not to be causing serious injury to arbitrary, unwarranted tariffs or quotas.

Serious Injury, or Threat Thereof, to a Domestic Industry

Present law

In determining whether the increased imports are a substantial cause of serious injury or threat thereof to the domestic industry, the ITC is required to consider a number of factors. With respect to serious injury, the ITC must take into account all factors which it considers relevant, including, but not limited to: the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

With respect to threat of serious injury, the ITC must take into account all factors which it considers relevant, including, but not limited to: a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned.

In determining the domestic industry producing an article like or directly competitive with an imported article, the ITC may—

(a) in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(b) in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(c) in the case of one or more domestic producers who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

Explanation of provision

The bill makes several changes with respect to factors which the ITC must consider in its injury analysis. First, in considering the inability of a significant number of firms to operate at a reasonable level of profit, only the profitability of domestic production facilities is relevant. Second, in determining threat of serious injury, three additional factors are required to be considered: (1) a decrease in market share; (2) the extent to which the U.S. market is a focal point for diversion of foreign exports; and (3) the inability of producers in the domestic industry to generate adequate capital to finance the modernization of domestic plants and equipment. Finally, the bill mandates that only domestic production of like or competitive articles be taken into account.

Reasons for change

In determining injury or threat of injury to a domestic industry, only the facilities and operations located in the United States should be considered by the ITC. The Committee recognizes that some companies may find it in their own commercial interest to be both an importer and a domestic producer at the same time, or to have certain facilities outside the United States. For purposes of determining serious injury to a domestic industry within the context of section 201 proceedings, however, only domestic production and domestic production facilities are relevant.

The bill further requires the ITC to consider three additional factors in determining whether a threat of serious injury exist. A decrease in market share is relevant to this issue because it may signal a trend of imports taking away market opportunities from domestic producers. Diversion of foreign product to the U.S. market is relevant because it may indicate increased pressure for foreign products to enter the U.S. market. Finally, the inability of domestic producers to generate adequate capital to finance modernization of their domestic plants and equipment may foreshadow serious injury in capital-intensive industries, where changes in technology have considerable implications for competitiveness.

Trade Adjustment Assistance

Present law

Section 202 provides that, if the ITC recommends import relief, the President must evaluate the extent to which trade adjustment assistance (TAA) has been made available to workers and firms in the industry, and may direct the Secretaries of Labor and Commerce to expedite consideration of petitions for TAA.

If the ITC determines that the provision of TAA alone can effectively remedy the injury and thus recommends TAA instead of import relief, then the President is required to direct the Secretaries of Labor and Commerce to expedite consideration of petitions for TAA.

Explanation of provision

The bill provides that an affirmative finding of serious injury by the ITC shall automatically trigger expedited consideration of petitions for TAA from workers and firms within the industry, regardless of USTR's ultimate decision on import relief. A tie vote by the Commission on the issue of injury, however, shall not be considered an affirmative finding.

Within 48 hours of an affirmative injury determination, ITC must notify the Secretaries of Labor and Commerce of such determination, of the identity of domestic producers and products within the scope of the finding, and of all nonconfidential information obtained which may be relevant to a determination of eligibility for TAA. All petitions from workers and firms within the scope of the injury determination filed within three years of the determination would receive expedited consideration.

Reasons for change

The Committee feels that trade adjustment assistance should always be available to workers and firms who are adversely affected by imports, and therefore designating the provision of trade adjustment assistance as an *optional* form of relief, *instead* of tariffs or quotas, is inappropriate. The bill thus removes trade adjustment assistance from the options which the ITC can recommend to the USTR.

This change should not, however, be interpreted to mean that the provision of trade adjustment assistance is not meaningful in the context of section 201 relief. To the contrary, the Committee considers the provision of trade adjustment assistance to be an important and necessary tool for any industry seriously injured by imports, regardless of whether the USTR decides import relief is or is not in the national economic interest. Accordingly, the bill further requires, under section 143, that all petitions for trade adjustment assistance from workers and firms in an industry which has been found by the ITC to be seriously injured by imports, to be given expedited consideration. This change reflects the view of the Committee that the prompt provision of trade adjustment assistance is imperative to a successful adjustment process.

Effect of Import Relief on Consumers and Domestic Competition

Present law

In determining whether to provide import relief, and the method and duration of import relief, the President is required to take into account the effect of import relief on consumers (including the price and availability of the imported article and the domestically produced article) and on competition in the domestic markets for such articles. The ITC, however, is not required to consider this factor at all under current law.

Explanation of provision

In its report to the USTR, the ITC would be required to estimate the effect of the import relief which it recommended on consumers and on competition in domestic markets. The USTR would be required, as under current law, to take this effect into account in its import relief determination.

Reasons for change

Under current law, the effect of import relief on consumers and on domestic competition is required to be taken into account in any import relief determination, and is often cited as a reason for denial of import relief. The nature and extent of this effect, however, is often unclear. The bill would require the ITC, when it recommends import relief to the USTR, to estimate the effect of whatever import relief it is recommending on consumers and on domestic competition. This change is an attempt to make such effects more transparent.

Factors for USTR to Consider in Determining Relief

Present Law

Section 202 of the Trade Act directs the President to take into account, among other relevant factors, the following nine factors in determining whether to provide import relief and what method and amount the import relief should be:

(1) advice from the Secretary of Labor on the extent to which workers in the industry have applied for, or are likely to receive, adjustment assistance;

(2) advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, or are likely to receive, adjustment assistance;

(3) the probable effectiveness of import relief in promoting adjustment, and efforts being made, or to be implemented by the industry to adjust to import competition;

(4) the effect of import relief on consumers and on domestic competition;

(5) the effect of import relief on the international economic interests of the country;

(6) the impact on U.S. industries as a consequence of our trading partners' right to compensation;

(7) the geographic concentration of the imported products marketed in the United States;

(8) the extent to which the United States market is the focal point for exports of such articles by reason of restraints on exports of such articles to, or imports of such articles into, third country markets; and

(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

Explanation of provision

The bill adds three additional factors for the USTR to consider:

(1) the probable effectiveness of the provision of trade adjustment assistance in remedying the dislocation to workers and communities;

(2) advice from the Secretary of Agriculture on the likely impact of any import relief on U.S. agricultural exports; and

(3) the contents of the industry adjustment plan, if submitted by an industry adjustment advisory group.

In addition, the USTR would be required to identify the likely impact of any import relief on U.S. agricultural exports in the report to Congress on his determination of relief.

Reasons for change

The addition of the first factor reflects the concern previously expressed that action be taken by the Federal government to remedy dislocations to workers and communities caused by import competition. If the provision of trade adjustment assistance is not likely to remedy the dislocations, there is a greater need for import relief to be provided.

The addition of the second factor reflects the concern expressed by the agricultural community that often compensation or foreign retaliation by our trading partners in response to U.S. import relief action is directed against U.S. agricultural exports. The bill would specifically require the USTR to take this effect into account, and in his report to Congress on action taken, to identify the likely impact of import relief on agricultural exports.

Finally, the USTR would be required to take into account any adjustment plan submitted by an industry adjustment advisory group, as discussed above.

Periodic Review of Domestic Industry's Efforts to Adjust to Import Competition

Present law

So long as any import relief remains in effect, the ITC is required to keep under review developments with respect to the industry concerned, including the progress and efforts made by firms in the industry to adjust to import competition. Upon request of the President, the ITC shall make reports to the President concerning such developments.

Explanation of provision

The bill requires the ITC to review and report on the progress and efforts made by firms in the domestic industry to adjust to import competition, on an annual basis after the second year of import relief.

Reasons for change

If section 201 import relief is to become a more effective tool for adjustment, domestic industries seeking temporary import relief must not only indicate a willingness to use the period of relief to adjust to new conditions of competition, but also demonstrate by their actions that they are actually making progress toward such adjustment. This provision of the bill is designed to monitor such progress. By requiring the ITC to review the efforts made by the domestic industry to adjust, and report on such efforts on an annual basis (beginning after the second year of import relief) the successful (or unsuccessful) use of the "breathing space" by the domestic industry will be more readily apparent. This information will moreover be useful to the USTR in determining whether import relief should be modified, terminated, or extended, particularly when the provision of relief is conditioned upon certain elements of an adjustment plan.

SECTION 142. ADJUSTMENT ASSISTANCE TRUST FUND

Present law

No provision. Any revenues from tariffs go into the general fund of the Treasury.

Explanation of provision

Section 142 establishes a new Adjustment Assistance Trust Fund, for revenues collected either from import relief provided under chapter 1 of title II of the Trade Act of 1974 (see section 141 of this bill) or from the auctioning of import licenses as authorized under section 1102 of the Trade Agreements Act of 1979. Revenues deposited in the trust fund may only be used for trade adjustment assistance under chapters 2 and 3 of the Trade Act of 1974. At the end of each fiscal year, any remaining revenues would be transferred to general funds as miscellaneous receipts.

Reasons for change

Durings its deliberations on the effectiveness of import relief under section 201 in promoting adjustment, the Committee gave considerable attention to the link between the provision of import relief and the provision of adjustment assistance. The establishment of the trust fund under section 142 is an attempt to channel the revenues derived from import protection directly to programs designed to assist adjustment by workers and firms injured by the import competition.

The Committee does not expect that revenues in the trust fund will be sufficient to fund the entire trade adjustment assistance program. Rather it is intended to supplement amounts otherwise available, and does not affect those portions of trade adjustment assistance which are entitlement payments. The establishment of the trust fund, however, is an important step in the process of relating import relief to adjustment measures.

SECTION 143. EXPEDITED CONSIDERATION OF PETITIONS FOR ADJUSTMENT ASSISTANCE

Present law

Chapters 2 and 3 of Title II of the Trade Act of 1974 as amended provide the statutory authority for the trade adjustment assistance (TAA) program. Petitions for certification of eligibility to apply for adjustment assistance may be filed by workers with the Secretary of Labor under section 221, and by firms with the Secretary of Commerce under section 251. Determinations regarding eligibility and certification must be made as soon as possible after the date a petition is filed, but in any event not later than 60 days after the filing of the petition.

Under section 202 of the Trade Act, the President may direct the Secretary of Labor and the Secretary of Commerce to give expeditious consideration to petitions for adjustment assistance, pursuant to an affirmative finding and report by the International Trade Commission under section 201.

Explanation of provision

Section 143 requires the Secretary of Labor and Secretary of Commerce to give expedited consideration to all petitions for adjustment assistance from workers and firms within a domestic industry which the ITC has found to be seriously injured by imports under chapter 1 of the Trade Act, provided that such petitions are filed within three years of the ITC's affirmative injury determination.

Reasons for change

Section 143 provides for expedited consideration of petitions for TAA in conformity with changes made under section 141 of the bill relating to proceedings for import relief (chapter 1 of the Trade Act of 1974). The Committee intends, by this section, to encourage the prompt provision of trade adjustment assistance to workers and firms in industries which have already been found by the ITC to be seriously injured by import competition. It does not intend for other petitions for TAA to be disregarded or neglected as a result of this new requirement. The Committee expects current law, which requires determinations on all petitions to be made within 60 days of filing of the petition, to continue in force. The fact that the ITC has already determined under chapter 1 that a domestic industry is seriously injured by imports should, in the views of the Committee, make prompt determinations of petitions from such workers and firms in that industry much easier.

SECTION 144. MARKET DISRUPTION

Present law

Section 406 of the Trade Act of 1974 authorizes the President to provide temporary relief in the form of tariffs or quotas if imports from communist countries are causing market disruption. No evidence of unfair trade practices is required, or taken into account. Market disruption exists when imports of an article, like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Under the current law, a petition for relief may be filed with the ITC by workers or firms in the domestic industry. The ITC must determine, within 3 months, whether imports of an article produced in a communist country are causing market disruption. If the ITC finds that market disruption exists, it must also recommend to the President relief in the form of tariffs or quantitative restrictions, to prevent or remedy such market disruption.

Upon receiving the ITC report containing its findings and recommendations, the President has 60 days to take action. As in normal import relief cases under section 202, the President must provide import relief unless he determines that such relief is not in the national economic interest of the United States.

Explanation of provision

Section 144 amends section 406 of the Trade Act of 1974 to improve its effectiveness in dealing with market disruption from nonmarket economy imports. In general, section 144 lowers the test for establishing market disruption and requires consideration of such foreign unfair trade practices as subsidies and dumping.

Section 144 amends section 406(a) (3) and (4) and subsections (b), (c), and (d) by striking out references to "President" and replacing it with "United States Trade Representative." Under these changes, the ITC report on its determinations under section 406 is to be submitted to the USTR, not to the President. The changes transfer from the President to the USTR the authority to take action in response to an affirmative ITC determination. Finally, petitions filed by private parties under section 406 are to be filed with the USTR, not the President.

Section 144 also amends section 406 by striking out all references in that section to "Communist country" and inserting instead the term "non-market economy country." It also amends section 406(e) to read, "For purposes of this section, the term 'non-market economy country' means any country dominated or controlled by communism." That is the same definition which previously applied to the term "communist country" under section 406, as defined in section 406(e)(1).

Section 144 adds a new section 406(f) dealing with the ITC determination of market disruption. In general, subsection (f) lowers the standard of causation under section 406, by requiring that imports be an "important" cause of material injury or threat of injury, rather than a "significant" cause. Specifically, the new section 406(f)(1) provides that "for purposes of this section, market disruption exists within a domestic industry whenever an article is being imported into the United States in such increased quantities (either absolutely or relatively) as to be an important cause of material injury or the threat thereof, to the domestic industry providing an article like or directly competetive with the imported article." Section 406(f) also sets forth specific factors which the ITC is required to consider, among other factors, in making its determination. Those factors, which are set forth in section 406(f)(2), are:

(A) the volume of imports of the merchandise which is the subject of the investigation;

(B) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(C) the import of imports of such merchandise on domestic producers of like or directly competitive articles; and

(D) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

A new section 406(f)(3) provides direction to the ITC in evaluating the volume and price effects of imports and the impact of imports on the affected industry with respect to the volume of imports, subparagraph (A) directs the Commission to consider whether the increase in the volume of imports, either in absolute terms of relative to production or consumption in the United States, is significant.

With respect to the effect of imports on price, subparagraph (B) directs the ITC to consider whether:

(a) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(b) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

With respect to the impact of imports on the affected industry, the ITC must evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to:

(a) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(b) factors affecting domestic prices, and

(c) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

A new section 406(f)(4) requires the ITC, where appropriate, to cumulate imports from two or more non-market economy countries which are subject to investigation when making its determination on market disruption.

Under a new section 406(g), the ITC may recommend, in addition to other relief already available, a variable tariff based on a comparison of average domestic producer prices and average import prices.

Finally, section 144 adds a new section 406(h), which provides that the USTR may deny import relief under section 205 of the Trade Act of 1974 (as it relates to imports from non-market economies) *only if* such relief would have a serious negative impact on the domestic economy.

Reasons for change

The Committee received considerable testimony during its hearings on problems relating to imports from non-market economy countries and the inadequacy of current trade laws to deal effectively with such problems. In particular the Committee has concern over the administrative difficulties that arise from applying basically market-oriented statutes to nonmarket economies. The provisions of section 144 are designed to correct some of these problems by making the provisions of section 406 more flexible in dealing with competition from non-market economy countries. In particular, section 144 expands the scope of section 406 to allow consideration of unfair trading practices such as dumping and subsidies in addition to increased fair competition.

The Committee expects that the changes made by section 144 of the bill will enable section 406 to be an effective remedy against injurious competition from nonmarket economy imports, by lowering the tests for determining market disruption, expanding its applicability to unfair trade practices, expanding the remedy options, and limiting the description of the USTR in providing relief.

Chapter 2—Amendments to the Countervailing and Antidumping Duty Laws

SECTION 151. REFERENCE

Section 151 states that, unless otherwise provided, whenever in this chapter an amendment or repeal of, a title, subtitle, section, subsection, or other provision, the reference shall be considered to be made to a title, subtitle, section, subsection, or other provision of the Tariff Act of 1930.

SECTION 152. PROCESSED AGRICULTURAL PRODUCTS

Present law

Under section 771(4) of the Tariff Act of 1930, the term "industry" means the domestic producers as a whole of a like product, or those producers who collective output of the like product constitutes a major proportion of the total domestic production of that product. Under section 771(10), the term "like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.

Under section 771(9), an "interested party" who has standing to file an antidumping or countervailing duty petition on behalf of an industry includes:

(a) a manufacturer, producer, or wholesaler in the United States of a like product;

(b) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product;

(c) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States; and

(d) an association, a majority of whose members is composed of interested parties described above.

No special rules are provided under present law with respect to the definitions of "industry" or "interested party" in investigations relating to processed agricultural products.

Explanation of provision

Section 152 makes certain amendments to the definitions of "industry" and "interested party" to allow producers of a raw agricultural product in appropriate cases to be considered part of the domestic industry, and to have standing along with processors to bring antidumping and countervailing duty cases involving imports of processed agricultural products.

Section 152(a) adds a new section 771(4)(E) to the definition of "industry" to provide that in countervailing duty and antidumping investigations involving agricultural products processed from raw agricultural products, the producers of the raw agricultural product may be considered part of the industry producing the processed product if two tests are met: (1) the processed agricultural product must be produced from the raw agricultural product through a single continuous line of production, and (2) there is a substantial coincidence of economic interest between producers of the raw and of the processed agricultural products.

Processed agricultural products are considered to be processed from raw agricultural products through a single continuous line of production if: (1) the raw agricultural product is substantially or completely devoted to the production of the processed product, and (2) the processed agricultural product is produced substantially or completely from the raw product.

The determination as to whether there is substantial coincidence of economic interest between producers of the raw and processed agricultural products is to be based upon relevant economic factors demonstrating economic relationships between the two groups of producers.

Section 152(b) amends section 771(7) of the Tariff Act of 1930 by adding an additional factor to be considered by the Commission in determining the existence of threat of material injury. In any countervailing or antidumping investigation involving imports of both a raw and processed agricultural product, the Commission would be required to consider the likelihood that an affirmative determination with respect to the raw or the processed product (but not both) would result in an increase in the imports of the other product to a materially injurious level. It should be noted that this amendment is not necessarily restricted to raw and processed agricultural products whose producers are determined to be part of the same industry pursuant to the new section 771(4)(E).

Section 152(c) of the bill amends the definition of "interested party" under section 771(9) of the Tariff Act of 1930 to provide that producers of a raw agricultural product who were determined to be part of the industry producing the product processed from the raw product (pursuant to the new section 771(4)(E), in combination with processors, would have standing to bring countervailing duty and antidumping investigations involving the processed product. A coalition or trade association which is representative of either processors or processors and producers would be considered an interested party and thus have standing to file petitions for investigations relating to processed agricultural products.

Reasons for change

Section 152 of the bill reflects a longstanding concern by the Congress that the special characteristics and nature of the agricultural sector be taken into account under our trade laws. Under section 771(7)(D) of the Tariff Act of 1930, for example, there is explicit statutory recognition of the need for special considerations in cases involving agricultural products to account for the role of agricultural price support programs.

The three amendments contained in section 152 of the bill directly relate to the inquiry made by the International Trade Commission under Title VII of whether agricultural industries are being materially injured by dumped or subsidized imports. Many of the concepts embodied in these amendments have been applied by the ITC in many of its past cases involving agricultural products. The purpose of including them now in the statute is to give explicit congressional endorsement of their consideration, and encourage their continued application.

In defining the scope of the domestic industry, the ITC has in the past considered whether the producers of a raw agricultural product as well as the processors of the finished product operate as a single industry producing the processed "like" product. In her testimony before the Senate Finance Committee on December 9, 1985, the General Counsel of the Commission, Lyn Schlitt, stated:

> In a number of agricultural investigations, the Commission has considered several evidentiary factors in determining whether growers and processors constitute a single industry producing a processed agricultural product, including whether there is a single, continuous line of production without diversion from the raw material to the processed agricultural product, and evidence of whether there exists an integration of economic interest and/or legal relationship between the growers and the processors. The Commission has also stated that determinations of industry are to be on a case by case basis, and that it would consider other evidence that growers and producers are a single industry. Commission opinions consider these issues as evidentiary factors. There is no legal test or tests, but a factual inquiry. The Commission looks at these factors to determine whether the growers, in fact, operate as a part of the industry producing the processed product.

In past cases, the Commission has examined the degree of vertical integration in the industry, as manifested by common ownership between packers and processors, and the existence of contractual relationships between prices of the raw and processed agricultural commodities. It is the Committee's intent that the Commission continue to view these factors as possible evidence of coincidence of economic interests. In recent cases, the Commission has stated that these factors are not the only ones that may be considered, and that the factors may be based upon economic, as well as legal relationships. The bill's provision specifically provides that the Commission may look at other economic factors in determining whether there is a coincidence of economic interests.

The Commission may examine a variety of economic factors in making its determination as to the scope of the industry. The Commission need not base its determination on the same factors in every case. It is the intent of the Committee that the Commission apply those factors which are deemed to be most relevant to the particular industry which is the subject of the investigation. These factors may be based upon market or economic conditions as well as legal relationships.

In those cases where the ITC determines that price is a factor to be considered, the Commission is directed to examine the degree of correlation between prices of the raw and of the processed agricultural commodities. Such price relationship could be based upon market factors as well as contractural relationships. In addition, there are commodities for which the processor adds very little value to the raw product in the processing operation. In such cases, the ITC would consider whether the value of the raw agricultural product constituted a significent percentage of the value of the processed agricultural product as evidence of coincidence of economic interest.

The breadth of the definition of domestic industry obviously has significant implications for determining whether there is material injury, or a threat of material injury to the domestic industry. In cases in which the domestic industry includes both producers and processors under the new section 771(4)(E), injury to the producers of the raw agricultural product as a result of imports of the processed agricultural product is relevant in determining injury to the domestic industry.

SECTION 153. DEFINITION OF DOMESTIC SUBSIDY

Present law

Section 771(5) sets forth a list of actionable domestic subsidies which, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, fall within the definition of subsidy subject to U.S. countervailing duties. This list includes (but is not limited to):

(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

(ii) The provision of goods or services at preferential rates.

Explanation of provision

Section 153 would merge clauses (i) and (ii), so that the list of actionable domestic subsidies includes:

> The provision of capital, loans, loan guarantees, goods or services at preferential rates or on terms inconsistent with commercial considerations.

This amendment would expand the definition of subsidy to explicitly authorize countervailing duties to be imposed (a) for the provision of capital, loans, or loan guarantees at preferential rates, and (b) for the provison of goods or services on terms inconsistent with commercial considerations.

Reasons for change

The prupose of this change is to carry out original Congressional intent of covering under the scope of the countervailing duty laws all bounties or grants by governments which aid specific industries. Preferential loans, loan guarantees or other capital infusions by the Government are potentially as much of a subsidy as the provision of goods or services on a preferential basis. Moreover, the provision of goods or services on terms inconsistent with commercial consideration—such as providing certain services to a specific industry well below prevailing market rates—could result in substantial benefits to that industry. These changes are necessary in order to prevent injurious subsidies which have been carefully structured by a foreign government to avoid the scope of our law. On the other hand, measurement of the *level* of benefit bestowed by a government through such subsidies remains the task of the administering authority under its current methodology.

SECTION 154. MATERIAL INJURY AND THREAT OF MATERIAL INJURY

Cumulation

Present law

In determining whether there is material injury by reason of dumped or subsidized imports, the ITC must cumulatively assess the volume and price effects of imports from two or more countries of like products subject to investigation, if such imports compete with each other and with like products of the domestic industry in the U.S. market.

Explanation of provision

Section 154 makes certain amendments to mandate specifically cross-statute cumulation, and to require cumulation to the extent practicable in cases involving threat of material injury.

In determining material injury, ITC must cumulatively assess the volume and price effects of imports of a product from two or more countries if such imports either (a) are curently subject to any antidumping or countervailing duty investigations, or (b) within the past 12 months were subject to any antidumping or countervailing duty investigation which resulted in a final order, suspension agreement, or termination based on a quantitative restraint agreement. The additional requirement that such imports, to be cumulated, must compete with each other and with the like product of the domestic industry is retained.

In determining threat of material injury, the ITC must, to the extent practicable, cumulatively assess the increases in market penetration and price effects of imports from two or more countries if such imports are currently subject to any antidumping or countervailing duty investigation, and such imports compete with each other and with the like product of the domestic industry.

Reasons for change

Section 154 merely clarifies the Committee's original intent in mandating cumulation in 1984 under provisions later incorporated into the Trade and Tariff Act of 1985 (P.L. 98-573). Since passage of that Act, questions have arisen during the course of Commission investigations as to whether cumulation of dumped and subsidized imports which compete with one another is required. The Committee believes that cumulation of all unfairly traded imports which are competing at the same time in the U.S. market is appropriate.

The 12-month limitation on previous orders is intended to ensure against cumulation with imports for which any assessment of unfairness occurred well prior to the imports under investigation. In applying this section to imports subject to prior orders, the Commission should only cumulate imports prior to such orders, since imposition of final relief would have eliminated the element of unfairness represented by any margin of dumping or subsidization.

The Committee intends, by requiring cumulation to the extent practicable in determining threat of material unjury that the ITC apply the same principles regarding normal or cross-statutory cumulation in threat determinations as it would apply in material injury determinations. Cumulation in threat cases, however, would not include imports which are subject to preexisting orders, since it would no longer be possible for such imports to constitute a threat. Moreover, the Committee recognizes the difficulty of applying the concept of cumulation to threat cases, and does not seek to require cumulation where it is impracticable to do so because such assessment would be conjectural or speculative.

Threat of Material Injury Factors

Present law

In determining whether there is a threat of material injury to a domestic industry by reason of dumped or subsidized imports, the ITC must consider, among other relevant economic factors, the following:

(1) if a subsidy is involved, the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement);

(2) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States;

(3) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

(4) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise;

(5) any substantial increase in inventories of the merchandise in the United States;

(6) the presence of underutilized capacity for producing the merchandise in the exporting country;

(7) any other demonstrable adverse trends that indicate the probability that the importation of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury; and

(8) the potential for product-shifting.

Explanation of provision

Section 154 of the bill adds three new factors for the ITC to consider in determining threat of material injury. The first is evidence of foreign export targeting (as defined under the bill's provision relating to Section 301). The second is diversion of foreign products to the U.S. market by reason of restraints on exports of the merchandise to, or on imports of the merchandise into, third country markets.

In investigations involving dumping, the Commission would also be required to consider whether dumping of the same merchandise by the same party in other GATT member markets suggests a threat of material injury to the U.S. industry. The Commission must request information concerning this issue from the foreign manufacturer, exporter, or U.S. importer. If they fail to present specific and convincing evidence that the previous finding(s) of dumping in other markets does not suggest a threat of injury to the U.S. industry, the Commission may draw adverse inferences.

Reasons for change

The changes made by section 154 reflect the Committee's growing concern with three types of practices which are a potential threat of material injury to U.S. industries: foreign export targeting, diversion, and worldwide dumping. The Committee received considerable testimony during its hearings on the injurious effects of these three occurrences. Current law, however, does not explicitly require consideration of these factors by the ITC in determining whether a threat of material injury exists. The Committee strongly believes that each of these factors should be considered by the Commission.

In particular, the Committee gave considerable attention to the serious adverse effects of extensive or repeated dumping of the same product in various export markets. Testimony presented during the Committee's hearings pointed out that findings of dumping and impositions of antidumping remedies in other countries on imports of the same product from the same country, may be indicative of a pattern of injurious export practices by foreign producers. In its deliberations the Committee considered establishing a rebuttable presumption of threat of material injury when there are dumping findings or antidumping remedies on the same merchandise from the same country in two or more GATT member markets. This approach was superseded, however, by the approach in section 154 in order to remain consistent with the GATT requirement that injury findings be based on positive evidence.

Special Rules for Fungible Products

Present law

No provision.

Explanation of provision

Section 154(4) adds a new paragraph (g) to section 771(7) setting forth "special rules for fungible products" with regard to the International Trade Commission's determination of material injury or threat thereof in cases involving fungible products. The term "fungible product" is defined as "merchandise sold by weight or volume without significant product differentiation in such merchandise whether produced by foreign or domestic producers."

The rules provide that the Commission should not make a negative determination with regard to material injury or threat thereof in fungible products cases solely on the basis of evidence with respect to the following four factors:

1. Sales or offers of sale of the imported merchandise were not the first sales or offers at a reduced price in the relevant market;
2. Price declines of similar magnitude occurred in other comparable markets (including submarkets or localities) where there is a relationship between the prices in such markets and the prices in the import impacted market;
3. United States producers also import the merchandise under investigation; or
4. United States producers of the product are profitable.

Reasons for change

The Committee is concerned tht recent decisions of the International Trade Commission ("ITC") on material injury may have failed to consider the dynamics of the markets for fungible products, where imports at less than fair value ("LTFV") may have been found by the Department of Commerce. In the case of such products, price rather than product differentiation is the predominant factor affecting sales and market share. Purchasers' price information is typically excellent and updated on a daily basis, so that suppliers must be prepared to meet the lowest price in the relevant market in order to maintain sales volume and market share. Sales prices are often set on the basis of unconfirmed purchaser assertions of price quotations from other suppliers. Storage costs for such products may be high, and the expense of any significant build-up of inventory through reduced sales volume can represent an immediate economic threat to a supplier. For these reasons, introduction of imports through actual sales or offers for sale, even at existing market prices, may have a price suppressing or depressing impact on all suppliers.

The price sensitivity of fungible products and the consequences of potential lost sales can also produce ripple effects in prices in other markets, including submarkets and localities. Price fluctuations may alter the significance of transportation costs in overall sales transactions costs and threaten supplier sales volume in those markets.

Because of the dynamics of price formation for fungible products, price leadership analysis may not be a reliable method for determining whether unfair imports are depressing U.S. market prices, or are a cause of material injury. For this reason, it is improper for the ITC to determine that material injury to a domestic industry producing a fungible product is not being caused by reason of LTFV (or subsidized) imports solely on the basis of either (1) price leadership analysis, or (2) evidence of parallel price reductions in other markets in which the imported merchandise was not sold in significant quantities.

When imports of a fungible product are available at dumped prices, domestic producers of the product may be forced to purchase the dumped imports themselves, displacing their United States production, in order to maintain their distribution networks and access to their customers. The alternative is even more damage to their businesses if their customers must look elsewhere for competitively priced products. The amendment therefore provides that such purchases are not to be considered a sole justification for a negative determination.

Finally, demand for many fungible products is dependent on demand for the product for which they are components. For example, sales of cement fluctuate depending on the level of construction activity. Price ordinarily rises when construction activity increases, and declines when demand slackens. Companies making fungible products for which there is derived demand expect to make low profits or lose money during periods of slack demand. As a corollary, such companies may be materially injured if imports suppress prices during times when demand is high, and therefore profits also should be high.

SECTION 155. RESOURCES INPUT SUBSIDIES

Present law

Section 771(5) of the Tariff Act of 1930, as amended (19 U.S.C. 1771(5)) defines the term "subsidy" as having the same meaning as "bounty or grant" under section 303 of the Tariff Act of 1930 bestowed or paid with respect to an imported products, and including but not limited to:

(1) any export subsidy in the illustrative list contained in Annex A of the GATT Agreement on Subsidies and Countervailing Measures; and

(2) the following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(a) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(b) The provision of goods or services at preferential rates;

(c) The grant of funds of forgiveness of debt to cover operating losses sustained by a specific industry;

(d) The assumption of any costs or expenses of manufacture, production, or distribution.

A domestic subsidy including one relating to resource input products may be countervailed, if it meets the above criteria, including the specific industry test.

Explanation of provision

Section 155 amends the definition of subsidy in section 771(5) of the Tariff Act of 1930 to include a separate category for "resource input subsidies" as a new subparagraph (C) within the list of government programs subject to countervailing duties. This provision addresses certain government price control mechanisms or regulations which grant a below market price to domestic manufacturers for basic resource products or the right to remove or extract natural resources. If such government programs meet certain criteria, products manufactured with the use of such subsidized resources may be subject to countervailing duties.

The first type of government price control which may result in a countervailing duty under new section 771(5)(c) exists when a government or government-regulated or controlled entity provides or sells an "input product" for use in the expecting country at a price below fair market value and not freely available, by reason of government regulation or control, for purchase by a U.S. producer for export to the United States. The second pricing mechanism which may result in a countervailing duty under the new section exists when a government or government-regulated or controlled entity provides or sells the "right to remove or extract" a resource, such as timber or mineral ore, at less than fair market value.

The fair market value of an input product or removal right is what a willing buyer would pay a willing seller in an arms-length transaction absent government regulation or control. To assist the administering authority in calculating the fair market value of input products and removal rights, the legislation provides non-exhaustive lists of factors to be considered. The countervailing duty would be assessed on the imported article on the basis of the difference between the domestic price and the fair market value of the resource input product or removal right.

Input products.—As indicated above, the standard for determining the fair market value of an input product is the price that in the absence of government regulation or control, a willing buyer would pay a willing seller for that product from the exporting country in an arm's-length transaction. This concept requires the administering authority, in cases where an input product subsidy is alleged, to make an objective determination of what the price of the input product would have been in that country in an unregulated atmosphere where market forces prevail.

Although this standard necessarily provides a good deal of discretion to the administering authority in determining an appropriate price level, various benchmarks are set forth as relevant prices for the administering authority to take into account. These include the export price, world market prices and market clearing (to the extent such markets are available) at which the product can be sold competitively by the exporting country in the market of other non-State-controlled economy countries, including the United States.

In arriving at the fair market value of an input product, it may be appropriate for the administering authority to consider the opportunity cost of such product, a concept recognized as valid by the Congressional Budget Office Staff Working Paper provided to the Committee in September, 1985. Opportunity cost is defined in the CBO study as the highest price commanded by a scarce resource (in this case, natural resources) in an alternative use. By this definition, the fair market value of an input product would be the price that the product would bring from the party willing to pay the most for it. To apply this concept corectly, however, opportunity cost has to measure actual opportunities, taking into accounts factors such as productive capacity and constraints on international transactions. For example if a country's export capacity is fully utilized or other practical constraints exist to exporting, the opportunity cost would be affected.

Frequently, observed market transactions provide the relevant price and opportunity cost information. Export prices from the country under investigation, for example often provide the most reliable measure of fair market value or opportunity costs when they are arm's-length transactions reflecting commercial considerations. As stated in the CBO Staff Study (at page 4), "export prices are a straight forward measure of fair market value". There are, however, circumstances when the export price does not reflect market conditions and would be an unreliable measure of fair market value. For example, special non-market factors such as government manipulation of export sales in limited quantities to artificially establish a low fair market value for purposes of this legislation of a government policy to discourage exports by maintaining an artifically high export price could significantly distort the export price and reduce its usefulness in determining fair market value.

In those cases, another relevant benchmark would be the current market clearing price in other markets to which the exporting country has access without physical or practical export constraints. For easily transportable commodities of even and predictable quality such as oil, world prices exist and would be useful in determining the opportunity cost in the exporting country.

In order to ensure a proper comparison between fair market value and the government-regulated price, the cost of transportation and handling required to move the resource input from the point of production would, to the extent included in the measures of fair market value (such as world market prices and market clearing prices) or the government price, be excluded from the calculations.

In order for a countervailing duty to be imposed with regard to input products, two additional conditions must also be met. First, the internal price must be one which is not freely available, *by reason of government regulation or control,* to U.S. producers for purchase and export to the U.S. market. The phrase "by reason of government regulation or control" clarifies that the bill is not intended to impose a countervailing duty on merchandise manufactured with a natural resource that is freely available to U.S. purchasers at a nondiscriminatory price, but which cannot be exported on a economically rational basis. For example, it is alleged that Venezuela and Trinidad and Tobago both make their natural gas freely available to United States purchasers at the domestic price but because of the prohibitive capital costs necessary, cannot export natural gas on an economically rational basis. If this is substantiated, for example, Venezuelan cement manufactured with such natural gas would not be subject to countervailing duties upon export to the United States. The bill would apply, however, if a foreign nation by law, decree or regulation denied United States purchasers free access to the input product at the domestic price.

Second, the resource input product, when measured by its fair market value must constitute a significant portion of the production cost of the final product that is the subject of the investigation. This limitation is intended to insure that the subsidy test would not apply to products where the fair market value of the resource component has a de minimis relationship to adjusted production costs and the determination must be made on a case-by-case basis. It is not practical to establish a fixed percentage of total costs that would be appropriate in all cases. However, for highly resource intensive products such as cement, carbon black, fertilizers and lumber, the resource component is clearly significant and the provision would generally apply.

Removal rights.—Section 155 defines the fair market value of a removal right in the same manner as for input products—that is, a willing buyer would pay a willing seller in an arms-length transaction for the removal right in the country providing or selling the right. In determining the fair market value and domestic prices of removal rights, it is expected that the administering authority will take into account the cost or value of any activity the recipient of a removal right must undertake to receive that right, such as the building of roads.

As amended by section 155, subparagraph 771B(c)(3) lists three factors which will assist in the calculation of the fair market value of removal rights. The first factor is the price paid for the removal right in private sales in the exporting country. In many cases where the sale of most removal rights is government controlled, some private arms-length sales do occur and can be indicative of what a market price might be. In addition, there may be private sales of a downstream product, such as logs in the case of timber, from which the value of a removal right can be derived. The second factor is the price paid in competitively bid government sales in the exporting country if such sales exist. An auction situation provides an opportunity to measure what a willing buyer would pay a willing seller for removal rights in question.

In a situation in which private or competitive bid sales are not the normal pattern or practice, they along may not be indicative of true fair market value if a prepondenance of subsidized sales has depressed the domestic market of the exporting country. However, the statute provides a third factor, to be considered in calculating fair market value—the price paid for comparable removal rights in comparable regions of other countries. Such other countries would include both those which export the product to the United States, if any, and the United States itself. In applying this factor, the administering authority should, to the extent possible, compare removal rights in the United States and in other countries which are as similar as possible in terms of: (1) quality of the resource product to be removed; (2) distance from the facility that will process the product; (3) distance from the market; (4) level of development of the country and (5) its market price structure; to allow for an appropriate comparison.

These three factors are a nonexhaustive list intended to assist the administering authority in calculating fair market value or opportunity cost of the removal right. Each is an objective standard, determined largely by market forces. However, other relevant factors may also be taken into account to assist the administering authority in determining what a willing buyer would pay a willing seller for such removal right in the absence of government regulation or control.

Injury test.—Section 155 provides that the injury test provided for in section 703(a) and 705(b) of the Act shall apply in all cases in which a resource input subsidy is alleged, without exception for those countries that are neither GATT members nor signatories to an equivalent bilateral agreement with the United States. This provision thus goes further than current law which does not require an injury test in cases involving dutiable goods from a country that is not a "country under the Agreement". While this inclusive requirement of an injury finding in resource input subsidy investigations is not presently required by the international obligations of the United States, it is consistent with the general principle of GATT Article VI and with the past practice of the Congress when expanding the application of our countervailing duty law. This requirement ensures that the provision will only be used to attack subsidy practices which are having a real impact on U.S. industries and will discourage the filing of frivolous claims. Moreover, it is the Committee's believe that this limited exception to the policy requiring accession to the Code or a comparable bilateral agreement as a condition to application of the injury test will not be a disincentive to adoption of the Code by nonsignatories.

With regard to prior cases, the Committee intends that annual reviews under section 751 of the Act will be conducted on the existence of resource input subsidies without the need for an injury test wherever a countervailing duty order was issued or an suspension agreement was entered into under section 303 of the Act without an injury test during the original investigation.

The injury test that would be applied in all investigations involving resource subsidy allegations is the same as under current law. That is, the Commission would evaluate the industry and injury criteria set forth in Section 771(7) of the Act as it does currently in investigations generally involving antidumping and countervailing duty allegations. The Committee does not, however, necessarily endorse all of the findings or legal conclusions that the Commission has made since 1979.

In particular, the Committee wishes to clarify the Congressional intent concerning an interpretative issue that has been recently raised. The 1979 amendments were intended by this Committee to be applied on a case-by-case basis without resort to disqualifying presumptions. This framework means that there are no established minimum market shares below which imports can be presumed to be noninjurious. The volume of imports is but one of many factors to be considered by the Commission in reaching its determinations under the law. And, in each case, the Commission is required by law to analyze the effect of the import volume involved in the specific context of the product and industry under investigation. Although in an individual case imports may be determined to be noninjurious because of insignificant market penetration, presumptions (whether rebuttable or not) that automatically rule out an injury finding are contrary to these requirements because of the diverse impact that small import quantities can have from case to case.

Where the market is saturated, or where supply and demand are balanced, the introduction of a new—albeit small—supply can have "discernable impact," particularly where the new product presence in the market if facilitated by unfair practices such as a subsidy in the country of production. In fact, the Commission has in many prior cases recognized the price sensitivity of fungible goods. When investigating imports, the Commission must consider, inter alia, whether and the extent to which prices in the United States market have been depressed or suppressed as a result of offers for sale of the imported product and/or increased supplies of the subsidized or dumped product in the United States market.

Reasons for change

The purpose of adding a specific provision to address the problem of resource input subsidies is to discourage the growing use of two-tiered pricing arrangements and other below market pricing structures by resource rich countries. These policies have the unwanted effect of subsidizing their domestic producers by affording them preferential or below market rates for resource products and, in so doing, skewing normal comparative advantage. Often, such below market prices cause an increase in domestic production which is uncontrolled by market forces. Exports naturally escalate. Manufacturers in other countries, such as the United States, which might be able to compete fairly in the market are unable to compete against below market resources provided to firms in an exporting country.

The Committee is aware of decisions by the Department of Commerce to the effect that pricing policies of this sort may not constitute subsidies because in those cases such prices were nominally generally available to all domestic purchasers. The Committee believes, however, that resource pricing practices of the type described in this provision should be prohibited subsidies even if nominally available to all industrial users, at least in cases where the resource in question comprises a significant portion of the cost of the final product. Moreover, a recent decision by the Court of International Trade, *Cabot Corp.* v. *United States,* No. 83-7-01044. Slip Op. No. 85, 102 (C.I.T. October 4, 1985), indicates that the Commerce Department has interpreted improperly the concept of general availability stressing that "the appropriate standard focuses on the de facto case-by-case effect of benefits provided to recipients rather than on the nominal availability of benefits." Although the Committee was encouraged by the court's decision in *Cabot* and the effect it is likely to have on future countervailing duty decisions by the administering authority, the Committee believes it is appropriate to explicitly recognize that resource input subsidies are countervailable notwithstanding their nominal availability to all industries within an exporting country when by the nature of the product and the government regulatory scheme, they offer greater benefits to resource intensive industries.

The Committee believes that policies of the type addressed by the resource input rule are subsidies within the meaning and spirit of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures. While the GATT recognizes a country's right to control over its natural resources, two-tiered pricing schemes and below market sales of resources distort prices to such a degree that the policies go beyond internal control of resouces but rather provide a substantial subsidy to domestic production. To the extent that these policies prove injurious to U.S. industry, the United States has the right to act against them. The Committee believes that these subsidies should be explicitly proscribed by the countervailing duty law.

Input products.—The term "input product" is not defined in the bill. The Committee clearly intends it to apply to basic energy products, such as petroleum, petroleum products (such as fuel oil), and natural gas. In addition, however, the Committee believes that the definition should be left flexible enough to apply in appropriate circumstances to other natural resources if they are the subject of a two-tiered or below fair market value government pricing scheme and are a significant portion of the resulting manufactured product.

Moreover, the term is broad enough to apply to cases where the government pricing scheme applies to different stages of processing or refinement of the basic resource product. In the energy area, for example, there is often a high degree of interchangeability between basic petroleum products and products at higher stages of refinement. The determination of whether the resource input provision applies to products at higher stages of refinement would depend upon how far the government regulation or control actually extends. However, the provision is not intended to apply automatically to all items, regardless of the stage of manufacture, simply because they were originally derived from natural resources. The Committee's major concern is with government price control schemes affecting the initial distribution of resource products which favor resource-intensive domestic producers.

Implicit in this bill is the principle that a country rich in natural resources may have natural cost advantages over other countries in producing a particular resource input product, and to the extent that market conditions permit, therefore could establish prices available to both export and domestic customers below those of other suppliers in the world market without being engaged in a subsidy practice. The provisions of the bill only apply where government price control or regulation results in a price that is below what the price would have been but for the government intervention, and for input products, where competing U.S. industries are denied access, by government regulation or control, to the lower price for export to production locations in the United States. It is this differential that provides a discriminatory preference to resource input purchasers in the producing country and which justifies countervailing duties. Absent such duties, U.S. industries that are injured as a consequence of the discriminatory resource pricing may be forced to close or relocate to the resource country.

However, if such discriminatory pricing is not found to exist, a countervailing duty would not be imposed under this provision. For example, with respect to the application of this legislation to investigations regarding Canadian exports of products with a significant natural gas component (e.g., ammonia, methanol, ethylene, and other petrochemical products), the Committee notes that continuing implementation of natural gas pricing policies by the Canadian government which has resulted in substantial progress toward market-oriented pricing. The export price for Canadian natural gas has declined substantially since 1983, from $4.40 per MMBtu to near $3 today, with spot sales reported at even lower prices, the result being a steady erosion of any margin between the domestic and export price for Canadian gas. Further, higher capital construction, tariff, and transportation costs for Canadian petrochemicals offset in large measure any pricing advantages for natural gas. Given these developments, it does not appear that at this time Canadian pricing and sales of natural gas would be likely to result in implementation of the remedies prescribed by this legislation.

Removal rights.—A separate provision has been included in new section 771B(a) for removal rights because the section on input products cannot adequately deal with removal rights subsidies. For example, an input products subsidy only exists if the product in question is not available at the domestic price for purchase by a U.S. company for export to the United States. A removal right, however, is, by definition, used in the exporting country; i.e., the removal right cannot be exported. In some cases, such as timber, the unfair advantage of a below market subsidy or a removal right accrues regardless of whether the resource, after extraction, can technically be freely exported, since the most economic use of the resource requires processing prior to extensive transportation. Further, even if the resource is exported after extraction, the exporting country has gained the advantage of its subsidy by forcing the extraction and transportation operations of the industry to move to its country. This provision is designed to address these problems.

The Committee intends that Section 771(b) apply only to removal rights which have the result and effect of providing a government subsidy to domestic production in the exporting country. This provision is not intended to apply automatically to all products simply because they were originally derived from natural resources. Likewise, this provision would not apply to any product manufactured or produced from an input product or removal right not controlled by the government of the exporting country.

For example, under this provision, softwood lumber products from Canada may be alleged to benefit from a government subsidy respecting removal rights for timber. At the present time, 90–95 percent of Canadian lumber is produced from provincial or federal government lands. The majority of Canadian softwood lumber exports come from British Columbia, Quebec, and Ontario, where the existence of the most significant subsidies was alleged before this Committee. However, there are Canadian producers which produce their lumber products from timber from private, or freehold land. Products originating from timber on freehold land, much of which indeed is outside of the provinces of British Columbia, Quebec and Ontario, are not intended to be subject to any countervailing duties. It is the Committee's intention that, should a subsidy finding result from an investigation of Canadian softwood lumber imports, any countervailing duty order would apply only to lumber products imported into the United States and originating from timber obtained under the removal rights, or stumpage, program provided or sold by federal or provincial governments.

Like the standard for input products, it is implicit in the removal rights standard for determining fair market value that a country rich in natural resources may have a natural cost advantage over other countries with regard to that resource. U.S. companies, in competing against other nations, must expect comparative advantage to determine who is successful. Where free markets operate, resources are allocated efficiently, and all countries benefit. To the extent that other nations provide domestic companies with undervalued input products and below market resource removal rights, however, free market competition is not occurring. This legislation will provide U.S. industries with an opportunity to prove to the administering authority that they are being harmed by foreign subsidies. To the extent that such subsidies exist, this legislation will assist U.S. industries in neutralizing those subsidies.

SECTION 156. DIVERSIONARY DUMPING

Present law

No provision. Current antidumping law only allows for antidumping duties to reflect the difference between the price at which a product which is under investigation is sold in the United States and the price at which it is sold abroad (foreign market value). Foreign market value is based on the price of such or similar merchandise in the home market, a third country market, or on a constructed value basis. Unless the foreign market value is based on the constructed value approach, there is no scrutiny of the prices of materials or components which were incorporated into the import product.

Explanation of provision

Section 156 of the bill adds a new section 739 to the antidumping law to allow for diversionary dumping to be taken into account in determining the foreign market value of a product under investigation.

Diversionary dumping refers to the exportation of a manufactured product which incorporates a dumped input product. A dumped input product is defined as any class or kind of merchandise which was previously subject to an antidumping investigation which resulted in either an antidumping duty order, or a termination or suspension of the investigation based in a quantitative restriction agreement (provided that an affirmative preliminary determination of dumping was made prior to the termination or suspension). The diversionary dumping provision of section 156 is to be applied when a dumped input product is purchased by a foreign manufacturer at a price less than its adjusted foreign market value, and is incorporated into a manufactured product which is then exported to the Untied States, and the manufactured product is currently subject to an antidumping investigation.

If the Commerce Department, during the course of its antidumping investigation with respect to the manufactured product, determines that diversionary dumping is occurring, then it must increase the foreign market value for the merchandise by the amount of the benefit bestowed from the diversionary dumping (i.e., purchase of the input product at less than its adjusted foreign market value).

If there is an antidumping duty order currently in effect with respect to the dumped input product, then the foreign market value of the input product identified in such order shall be used in determining the existence and amount of diversionary dumping benefit.

If there is no antidumping duty order currently in effect, because investigation was terminated or suspended on the basis of a quantitative restriction agreement, then the adjusted foreign market value of the input product shall be based on the best available information, including any information gathered in the previous investigation of the input product and information contained in the petition.

Reasons for change

The Committee first focused its attention on the problem of diversionary dumping during the 98th Congress, when it approved a provision in section 105 of H.R. 4784, the Trade Remedies Reform Act of 1984, to provide a remedy for what was then referred to as downstream dumping. The provision was dropped in conference, however, due to strong Administration objections and irreconcilable differences.

During the Committee's deliberations on trade reform legislation in the 99th Congress, discussion of the problem resurfaced. In adopting the provisions of section 156, the Committee attempted to create a remedy which would pose less administrative problems than earlier proposals.

Although the specific provisions of section 156 differ from those embodied in the 1984 legislation, the reasons for change stated in the report for the Trade Remedies Reform Act of 1984 are as relevant now as they were then, and are therefore repeated here.

> Present law does not address the problem of [diversionary] dumping. Yet this practice is becoming a significant irritant to U.S. business. It is becoming a more frequent occurrence throughout the world for producers in one country to receive dumped components, incorporate them into a finished product as a way of reducing costs, and then pass on the ill effects of such dumping to a third-country market. Without some effort to control this phenomenon, U.S. manufacturers will find themselves continuously disadvantaged by the price competition resulting from such practices. [Diversionary] dumping is just as pernicious as normal dumping, and should not be exempted from discipline.

SECTION 157. DOWNSTREAM PRODUCT MONITORING

Present law

No provision.

Explanation of provision

Section 157 adds a new section 780 to the Tariff Act of 1930 to provide for the monitoring of imports of certain downstream products. The provision would require the ITC to monitor levels of trade in certain downstream products which are designated by the Department of Commerce for monitoring. The ITC would publish quarterly reports on trade in monitored products, and if imports of any monitored product increase more than 5% over the previous quarter, the ITC shall further analyze such increase in the context of overall economic conditions in that product sector.

Downstream products which may be considered for monitoring include any manufactured product into which is incorporated a component part. A component part is defined as any imported article which (a) during the previous five years, has been subject to an antidumping or countervailing duty order or suspension agreement (provided there was least an affirmative preliminary determination by the administering authority) with respect to which a dumping margin or net subsidy of 15% or more was estimated, and (b) due to its inherent characteristics, is routinely used as a major part, material, component, assembly or subassembly in other manufactured products.

Domestic producers of articles like a component product or a downstream product may petition the Commerce Department to designate a downstream product for monitoring. Such request must identify the relevant downstream product, the relevant component part, and state the reasons for suspecting the likely diversion, as a result of the imposition of antidumping or countervailing duties on the component part, of foreign exports to the United States of the component part into increased production and export of the downstream product to the United States.

The Commerce Department must review all petitions for designation, and determine whether imports of a downstream product should be monitored. Such determination shall be based on whether there is a reasonable likelihood that imports of a downstream product may increase as a result of diversion related to the imposition of duties on the component part. In making this determination, the Commerce Department may consider, if appropriate, such factors as (a) the value of the component part in relation to the value of the downstream product; (b) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and (c) the relationship between foreign producers of the component product and foreign producers of the downstream product.

Determinations made by the Commerce Department with respect to designation of products to be monitored shall be published in the Federal Register, and transmitted to the ITC. Any determination with respect to the designation of a product to be monitored shall not be subject to judicial review.

The Commerce Department is required to consider the information contained in the ITC monitoring reports, in determining whether an investigation is warranted under the antidumping or countervailing duty law with respect to imports of a downstream product.

If the Commerce Department further determines that monitoring is no longer appropriate because imports of the downstream product are not increasing and there is no reasonable likelihood of diversion, it may request the ITC to cease monitoring imports of such product.

Reasons for change

The Committee has long been concerned about the downstream effects of the dumping or subsidization of goods which are incorporated into, or used in the manufacture or production of, other goods which are then traded in international markets. The provisions enacted into law in 1984 as section 771A of the Tariff Act (see section 613 of the Trade and Tariff Act of 1984) relating to upstream subsidies, are one result of this concern. The provisions relating to diversionary dumping in section 156 of this bill are similarly meant to address yet another aspect of this problem.

Section 157 is designed to complement these provisions, by providing a means for diversionary dumping and upstream subsidization to be detected before its effects devastage U.S. industries. Domestic producers of components parts or of downstream products, who would have reason to know of the risks of diversion taking place in light of their experience in the marketplace, would have the opportunity to petition the Commerce Department for designation of products to be monitored.

The Commerce Department is granted substantial discretion in determining whether a product should be so designated, but the Committee expects the Commerce Department to approve such designations whenever there is a *reasonable likelihood* that diversion will occur. Certainty, or even probability, of diversion is not required. The Commerce Department, in making its determination should consider all factors which are relevant to this issue. Such factors may include, for example, the value of the component part in relation to the value of the downstream product; the greater this proportion, the greater the likelihood of diversion. Another factor which may be relevant is the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; the which may be relevant is the relationship between foreign producers of the component part and foreign producers of the downstream product; the closer the relationship, the greater the likelihood of diversion.

The ultimate purpose of the monitoring program is to provide an early warning signal of possible diversionary practices. The Committee expects the Commerce Department, as well as potential petitioners, to consider the information obtained under this section carefully in determining whether an antidumping or countervailing duty investigation with respect to a downstream product may be warranted.

SECTION 158. PRIVATE REMEDY FOR INJURY RESULTING FROM DUMPING

Present law

The Revenue Act of 1916 makes it unlawful to import any article at a price substantially less than the actual market value or wholesale price of such articles "if done with the intent of destroying or injuring an industry in the United States." That statute allows any person injured in his business or property by reason of a violation of this section to sue in district court and, if successful, to recover treble damages.

Title VII of the Tariff Act of 1930, as amended, provides for the assessment of dumping duties on imports that have been determined by the Department of Commerce to be sold at less than fair market value (assuming an affirmative injury determination by the ITC). Such duties are assessed prospectively and are deposited in the general treasury.

Explanation of provision

Section 158 would add a new section to Title VII of the Tariff Act of 1930, as amended, providing for a private remedy for injury resulting from dumping. This section would allow a U.S. manufacturer, wholesaler or producer of a like product to a class or kind of merchandise subject to an antidumping order under section 736 to bring an action in the Court of International Trade to recover compensatory damages for the economic loss he has sustained as a result of the dumping. Such an action may be brought against any manufacturer of the merchandise or any exporter, importer or consignee who knew or had reason to know that the merchandise was sold at less than fair market value. Upon a finding of liability on the part of the defendant, the party bringing the action may recover damages for the economic loss suffered as a result of the dumping by the defendant for a period of up to 3 years prior to the date that a final order was published under section 735.

With regard to actions brought under this section against exporters, importers or consignees which are affiliates of a manufacturer which has an outstanding dumping order against it, the Committee believes that a strong presumption should exist that such parties "knew or had reason to know" that the merchandise was sold at less than fair-market value. In the Committee's view an exporter, importer or consignee should be considered to be an affiliate of a manufacturer if:

(A) the exporter, importer or consignee is the agent of such manufacturer;

(B) such manufacturer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, importer, or consignee;

(C) the exporter, importer or consignee owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business conducted by such manufacturer; or

(D) any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 percent or more of the voting power or control in the business carried on by the exporter, importer or consignee, and also 20 percent or more of such power or control in the business of the manufacturer.

Any action under this section must be brought within two years after publication of the antidumping duty order under section 736. However, an action may not be brought until 30 days after issuance of such order, and if such order is appealed, no action may be brought under this provision until the exhaustion of all appeals on the administrative order. The tolling of the 2-year limitation period would be suspended during the period while any judicial review or remand of an affirmative determination under subsection (a) or (b) of section 735 is pending and until a decision upon that review is rendered.

Reason for change

Under current law, domestic industries that are injured by dumped imports cannot, as a practical matter, be compensated for the injury caused by dumping. Under the dumping statute administered by the Department of Commerce, the only penalty for dumping is a duty assessed prospectively on imports of the offending merchandise. Although the Revenue Act of 1916 has long provided a private right of action for injury from dumping, the statute has never provided an effective deterrent to dumping because the burden of proof required for a criminal statute is inappropriate for a commercial tort. Thus, neither the traditional dumping statute with its prospective, noncompensatory relief nor the 1916 Act with its criminal intent requirement provides a viable means for domestic industries to obtain compensation for injury inflicted by dumped imports. Likewise, present law fails to provide any meaningful deterrent to dumping in a number of commercial situations where prospective remedies are irrelevant, as is the case in extremely fast moving "high technology" fields.

The Committee believes that domestic industries need an effective means to deter dumping through a private right of action for dumping. This new civil remedy would permit injured parties to file a civil lawsuit in the Court of International Trade seeking actual damages for the harm incurred by this unfair trade practice. The bill would complement the traditional dumping laws by permitting U.S. manufacturers to recover for past injury. An effective private remedy is the one way to assure import-sensitive domestic industries that the dumping laws will act as a deterrent to this unfair trade practice.

SECTION 159. MISCELLANEOUS AMENDMENTS

Application of Countervailing and Antidumping Duties to Governmental Importations

Present law

No provision.

Explanation of provision

Section 159(a) adds a new section 771(18) to the Tariff Act of 1930, which provides that any merchandise imported by, or for the use of, an agency of the U.S. Government is not exempt from the imposition of antidumping or countervailing duties.

Reasons for change

The purpose of this provision is to clarify that governmental importations, even if classified under TSUS Schedule 8 and therefore not subject to regular customs duties, are nevertheless subject to antidumping and countervailing duties. It has come to the attention of the Committee that purchases by the General Services Administration of imported titanium sponge for the National Defense Stockpile were exempted from payment of antidumping duties. The Committee feels that any exemption of the payment of antidumping or countervailing duties on imported goods is inconsistent with the Government's policies against unfair trade practices. The Government is obligated to enforce vigorously the unfair trade laws, even as applied to its own activities.

Access to Information

Present law

Under section 777 of the Tariff Act of 1930, the administering authority is permitted to make confidential information available under a protective order upon receipt of an application that describes the information requested and the reasons for the request. If the administering authority denies any request, application may be made to the Court of International Trade for an order directing that the information be made available. The Court may issue such an order subject to the appropriate sanctions.

Explanation of provision

Section 159(b) of the bill amends section 777 in several respects. First, it amends section 777(c) to make mandatory the release of all confidential information presented to or obtained by the administering authority during a proceeding under administrative protective order, except privileged or classified information and information of a type that the administering authority determines should not be released under administrative protective order. Second, the bill imposes reasonable time limits on the administering authority's determinations of whether to make information available under administrative protective order. Third, the subsection makes clear that the administering authority must return information submitted by a person who refuses to make it available under administrative protective order. Fourth, the bill requires any party submitting information to the administering authority during the proceeding to serve a copy of that information on other parties to the proceeding. Information, including confidential information, would be required to be served upon parties that are subject to a protective order, and nonconfidential summaries of all information should also be served on parties that are not subject to protective order. The information subject to service shall include all documents submitted to the administering authority. Finally, the bill would require information to be submitted to the administering authority on a timely basis within a reasonable deadline to be determined by the administering authority. The bill requires the administering authority to return information submitted to it that is not submitted with adequate opportunity for other parties to comment upon it.

Reasons for change

The changes made by section 159(b) would further streamline the procedures for providing fair and timely access to information considered by the administering authority in antidumping and countervailing duty proceedings. The provision will reduce delays in administering authority decisions concerning applications for access to information under administrative protective order and the release of confidential information under protective order. Although the administering authority will still retain a limited amount of discretion to refuse to release certain types of information that are not relevant to less than fair value determinations, the general rule would be that most business proprietary information will be releasable under protective order. Particular exceptions might include trade secrets, customer names, and the names of consulting firms conducting market research. The stage in the proceeding at which the information is provided to the Department of Commerce, e.g., at verification, is not dispositive of whether the Department must release the information.

By requiring service of all documents on parties to the proceeding, both the resources of the Department of Commerce and other interested parties will be conserved. Also, by requiring service of all documents rather than just briefs or memoranda submitted to the administering authority, all parties will be notified on a timely basis of the information being submitted. Information subject to the service requirement should include but not be limited to comments, letters, computer print-outs, responses to questionnaires or inquires by the administering authority, nonconfidential submissions and summaries.

The provision provides clear authority for the administering authority to reject information received after a reasonable deadline. It also requires the information submitted to the administering authority to be provided on a timely enough basis to permit comments by other parties. The setting of reasonable deadlines for submissions and the provision of comments on submissions should provide for a fairer and more efficient proceeding.

Drawback Treatment

Present law

Under section 313 of the Tariff Act of 1930, duties paid on imported merchandise which is used in the manufacture of goods for export, may be refunded upon the exportation of such goods. To receive benefit of drawback, the completed article must have been exported within five years of the date of importation of the relevant duty-paid merchandise. The amount of refund is equal to 99% of the duties attributable to the foreign, duty-paid content of the exported article. Under section 779 of the Tariff Act of 1930, both antidumping and countervailing duties are treated as regular custom duties and thus are eligible for drawback.

Explanation of provision

Section 159(c) of the bill would amend section 779 to prohibit antidumping and countervailing duties paid on imported merchandise from being eligible for refund under drawback provisions.

Reasons for change

Under section 622 of the Trade and Tariff Act of 1984, the Congress expanded the provisions relating to drawback to include countervailing duties as well as antidumping duties (which were already covered). The provisions of section 159(c) of this bill are directly contrary to action taken in 1984. This reversal is a reflection of the vigor and commitment which this Committee has to strict enforcement of unfair trade laws and to discouraging the continuing use of unfair trade practices.

The provisions of current law which allow for antidumping and countervailing duties to be refunded under drawback are counterproductive to U.S. Government efforts to discourage dumping and subsidization. If U.S. parties are allowed to buy dumped and subsidized goods at dumped and subsidized prices (which is essentially what the current drawback provisions allow) then dumping and subsidization will continue. All imports of dumped or subsidized merchandise, regardless of who is importing it, or for what purposes, must be subject to appropriate antidumping or countervailing duties.

Certification of Submissions

Present law

No provision.

Explanation of provision

Section 159(d) of the bill adds a new section 780 to the Tariff Act of 1930 to require any person providing factual information to the Department of Commerce or the ITC in connection with an antidumping or countervailing duty investigation, on behalf of a petitioner or interested party, to certify that such information is accurate and complete to the best of that person's knowledge.

Reasons for change

There is no requirement under current law that persons submitting factual information certify the accuracy of such information. To the extent that the party providing the information may not necessarily be the same party who prepared the information, or who will be directly affected by the outcome of the investigation, the incentive to provide accurate and complete submissions may be absent. This change is designed to ensure the accuracy and completeness of all submissions.

Chapter 3—Intellectual Property Rights

Chapter 3 contains several provisions which are designed to strengthen U.S. intellectual property right protection both domestically and internationally. The Committee places great importance on this issue because it believes that the technology and innovativeness of U.S. companies is unparalleled in the World. However, without adequate protection of such intellectual property rights, U.S. companies are at a significant disadvantage in competing in the world market place. This chapter sets forth Congressional findings and purposes; amends section 337 of the Tariff Act of 1930; creates a mechanism for gaining improved market access for persons that rely on intellectual property protection and establishes specific negotiating objectives regarding intellectual property rights.

SECTION 161. CONGRESSIONAL FINDINGS AND PURPOSES

Present law

No provision.

Explanation of provision

Section 161 sets forth a number of Congressional findings and purposes with regard to U.S. intellectual property rights, including the need—

(1) to improve international protection of such rights;

(2) to gain improved market access for persons relying on such rights;

(3) to improve U.S. trade laws with respect to such rights; and

(4) to provide for a comprehensive strategy to foster open international markets through unilateral, bilateral and multilateral efforts.

Reasons for change

This provision was included to highlight the importance that the Committee attaches to improving both domestic and international protection of U.S. intellectual property rights and to gaining improved market access throughout the world for U.S. persons relying on such intellectual property protection.

SECTION 162. PROTECTION UNDER THE TARIFF ACT OF 1930 (SECTION 337)

Injury to "Efficiently and Economically Operated" U.S. Industry

Present law

Section 337 of the Tariff Act of 1930 provides for relief against unfair methods of competition and unfair acts in the importation of articles into the United States or in their sale, if the effect or tendency of such actions is to destroy or substantially injure an efficiently and economically operated industry in the United States.

The U.S. International Trade Commission has the responsibility under section 337 to conduct an investigation of any alleged violation of this provision either upon a complaint being filed by an interested party or upon its own motion. If the Commission finds that a violation of this statute has occurred and determines that such relief is justified after considering the effect "upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States and United States consumers", it may provide relief in the form of an exclusion order or a cease and desist order.

Explanation of provision

Section 162 amends section 337 of the Tariff Act of 1930 in several important respects. First of all, it eliminates the need to demonstrate injury to, or the impairment or prevention of the establishment of, an industry in the United States for intellectual property rights cases. Secondly, it eliminates in all cases the requirement to establish that an industry in the United States is "efficiently and economically operated." Finally, although the injury standard would be eliminated, petitioners in intellectual property rights cases would have to demonstrate that an industry in the United States relating to the articles or intellectual property right concerned "exists or is in the process of being established."

The changes described above relating to statutory intellectual property rights cases would apply to:

1. The unauthorized importation into the United States, or the unauthorized sale within the United States after importation, of articles that—
   a. infringe a valid and enforceable United States patent or a valid United States copyright registered under title 17, United States Code; or
   b. are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent;
2. The importation into the United States, or the sale within the United States after importation, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946, if the manufacture or production of the article was unauthorized; and
3. The importation of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

In such intellectual property rights cases, an industry in the United States is considered to exist if there is, with respect to the articles, patent, copyright, trademark, or mask work concerned, in the United States—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in its exploitation, including engineering, research and development, or licensing.

Reasons for change

The fundamental purpose for the amendments made by section 162 is to strengthen the effectiveness of section 337 in addressing the growing problems being faced by U.S. companies from the importation of articles which infringe U.S. intellectual property rights.

Infringing imports were not the primary concern of Congress when section 337 was initially enacted in 1922. As indicated by the scope of its language, section 337 was designed to cover a broad range of unfair acts not then covered by other unfair import laws. However, over the years, patent, copyright, and trademark infringement were recognized as unfair practices within the meaning of the section 337, and today, section 337 is predominantly used to enforce U.S. intellectual property rights. According to a recent Government Accounting Office (GAO) study, 95 percent of the section 337 cases initiated since 1974 involve statutory intellectual property rights. The Committee believes that the injury and efficient and economic operation requirements of section 337, designed for the broad context originally intended in the statute, make no sense in the intellectual property area.

Unlike dumping or countervailing duties, or even other unfair trade practices such as false advertising or other business torts, the owner of intellectual property has been granted a temporary statutory right to exclude others from making, using, or selling the protected property for the purpose of encouraging innovation. Any sale in the United States of an infringing product is a sale that rightfully belongs only to the holder or licensee of that property. The importation of any infringing merchandise derogates from the statutory right and diminishes the value of the intellectual property. Under such circumstances, the Committee believes that requiring proof of injury, beyond that shown by proof of the infringement of a valid intellectual property right, should not be necessary.

The Committee recognizes that in very few cases have petitioners actually been denied relief because of failure to meet the economic tests relating to injury and economically and efficiently operated industry. However, the Committee is concerned that, because of these economic tests, some holders of U.S. intellectual property rights who seek relief from counterfeit or infringing imports are denied access to section 337 relief. Since 1974, according to GAO's survey, 11 complainants have been unable to meet all of the economic criteria and 6 of them were denied relief solely for this reason. The GAO survey further indicated, however, that firms have terminated their proceedings or accepted settlement agreements which they judged not in their best interests because they could not meet all of the statute's economic tests. It has been claimed that many firms may even have been discouraged from initiating proceedings because of these tests. Further, the cost of section 337 litigation is extremely high (ranging from $100,000 to $1 million with a few costing as much as $2.5 million according to GAO) and the legal costs of satisfying the economic criteria are reportedly equal to more than half of the total litigation expenses, thus further discouraging the use of section 337 to address the problem of counterfeit imports.

The Committee notes that in adopting section 162, it is effectively eliminating the requirement that the domestic industry be "economically and efficiently operated" and the requirement that the infringement have the tendency or effect of destroying or substantially injuring the domestic industry from section 337 as it applies to intellectual property cases. The Committee does not intend that the USITC or the USTR will re-introduce these requirements in making their public interest determinations.

Although the injury test has been eliminated for intellectual property rights cases, a petitioner must establish that a U.S. industry relating to the articles or intellectual property right concerned "exists or is in the process of being established." This requirement was maintained in order to preclude holders of U.S. intellectual property rights who have no contact with the United States other than such intellectual property rights from utilizing section 337. The purpose of the Commission is to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad. Retention of the requirement that the statute be utilized on behalf of an industry in the United States retains that essential nexus.

The Committee is concerned, however, that in recent decisions the Commission has interpreted the domestic industry requirement in an inconsistent and unduly narrow manner. This inconsistent application is best exhibited in the decisions in *Certain Miniature Battery-Operated, Allterrain Wheeled Vehicles, Certain Cube Puzzles,* and *Certain Products With Gremlins Character Depictions.* In order to clarify the industry standard a definition is included which specifies that an industry exists in the United States with respect to a particular article involving an intellectual property right if there is, in the United States—

1. significant investment in plant and equipment;
2. significant employment of labor or capital; or
3. substantial investment in the exploitation of the intellectual property right including engineering, research and development or licensing.

The first two factors in this definition have been relied on in Commission decisions finding that an industry does exist in the United States. The third factor, however, goes beyond ITC's recent decisions in this area. This definition does not require actual production of the article in the United States if it can be emonstrated that significant investment and activities of the type enumerated are taking place in the United States. Marketing and sales in the United States alone would not, however, be sufficient to meet this test. The definition could, however, encompass universities and other intellectual property owners who engage in extensive licensing of their rights to manufacturers.

The phrase "or in the process of being established" with regard to the industry requirement recognizes that there may be situations where, under the above definition, an industry does not "exist" but a party should be entitled to bring a 337 action. For example, if a new product is developed in the United States which is protected by a U.S. intellectual property right, the owner of the intellectual property right would not have to wait to bring an action under section 337 until he can satisfy the definition of industry, if he can demonstrate that he is taking the necessary steps to establish such an industry in the United States.

Finally, it is noted that the changes in this section are not intended to change existing law or practice regarding parallel imports or gray market goods. The substantive rights of intellectual property right owners with respect to this issue are unaffected by these amendments since the underlying statutes governing patents, copyrights, trademarks or mask works have not been changed. The law to be applied in section 337 cases raising this issue is the law as interpreted by United States courts.

Termination of Investigations by Consent Order or Settlement Agreement

Present law

No provision.

Explanation of provision

Section 162(a)(2) amends section 337(b)(1) of the Act to authorize the Commission to terminate investigations, in whole or in part, by issuing consent orders or on the basis of settlement agreements.

Reasons for change

The Commission has for a number of years terminated section 337 investigations in these ways without making a determination regarding whether the statute has been violated, under authority derived from the Administrative Procedure Act, specifically 5 U.S.C. subsection 554(c)(1). The amendment to section 337(b)(1) provides express authority in the Act for such terminations. It is intended to put to rest any lingering doubts regarding the Commission's authority to terminate investigations by issuance of consent orders or on the basis of settlement agreements without making a determination regarding violation of the statute.

Exclusion of Articles During Investigation

Present law

Under section 337, the Commission is empowered to issue both temporary and final exclusion orders prohibiting the entry of merchandise. There are no time limits for the issuance of temporary exclusion orders, however.

Explanation of provision

Section 162(a)(3) amends subsection (e) of the Act (1) to require the Commission to rule on petitions for a temporary exclusion order within 90 days (150 days in more complicated cases) of publication of the Commission's notice of investigation in the *Federal Register;* (2) to authorize the Commission to require the petitioner to post a bond as a prerequisite to the issuance of a temporary exclusion order, and (3) to authorize the Commission to grant preliminary relief in case involving alleged patent, copyright, registered trademark, or mask work infringement to the same extent as preliminary injuctions and temporary restraining orders may be issued by the federal district courts.

Reasons for change

Experience under the present statute has shown that the Commission sometimes provides temporary relief to complainants too late to benefit them. This section addresses this problem by amending subsection (e) of the Act to require a Commission determination regarding issuance of a temporary exclusion order within 90 days (150 days in more complicated investigations) of institution of the investigation. It is expected that the Commission will decide whether to issue such orders using the standards and procedures employed by the federal district courts when they decide whether to issue preliminary injunctions.

Section 162 also authorizes the Commission to require the petitioner to post a bond as a prerequisite to the issuance of a temporary exclusion order. The purpose of petitioner's bond is to hold the respondents harmless if it is later determined by the Commission that there is no violation of the Act. If forfeited, petitioner's bond, is to go to the respondents.

Finally, in cases involving alleged patent, copyright, registered trademark, or mask work infringement, the section authorizes the Commission to grant preliminary relief to the same extent as preliminary injunctions and temporary restraining orders are granted by federal district courts under the Federal Rules of Civil Procedure.

Cease and Desist Orders

Present law

Section 337(f) provides for the Commission's use of cease and desist orders "in lieu of" the exclusion of articles. Penalties for the violation of such orders are set at the greater of $10,000 or the domestic value of the articles.

Explanation of provision

Section 162(a)(4) amends section (f)(1) of the Act in two respects. It authorizes the Commission to issue cease and desist orders *in addition to* exclusion orders and it raises the penalty for violation of such orders to "$100,000 or the domestic value of the articles."

Reasons for change

In some investigations, the Commission has interpreted the current language as prohibiting it from issuing both an exclusion order and cease and desist order to remedy the same unfair act.

There are circumstances, however, where it is in the public interest to issue both an exclusion order and cease and desist order for the same unfair act. For example, a cease and desist order prohibiting a domestic respondent from selling the imported infringing product in the United States may be appropriate when the product has been stockpiled during the pendency of an investigation and an exclusion order may be appropriate to prevent future shipments of the infringing product. When the Commission determines that both remedies are necessary, it should be without legal question that the Commission has authority to order such relief. This amendment provides that authority.

Transfer from President to USTR Authority to Overrule USTR Decisions

Present law

Section 337(q) requires the Commission to transmit its determination to the President and allows the President to disapprove such determination "for policy reasons" within 60 days after receiving it.

Explanation of provision

Section 162(a)(5)(A) strikes "President" each place it appears in subsection (g) of section 337 and inserts "United States Trade Representative" in lieu thereof, thus transferring from the President to the U.S. Trade Representative the authority to overrule ITC determinations for policy reasons.

Reasons for change

This change is consistent with other sections of the bill which attempt to strengthen the role of the U.S. Trade Representative by delegating the responsibility for making decisions on trade issues which heretofore had been made by the President. The underlying purpose for such delegations is to depoliticize the decision-making process on trade issues.

Default Judgments

Present law

No provision.

Explanation of provision

Section 162(a)(5)(c) adds a new subsection to the Act which requires the Commission, in cases involving defaulting respondents, to presume the facts alleged in the complaint to be true and, upon request, to issue relief against the defaulting respondents, unless the enumerated public interest factors (the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers) preclude relief. However, a general exclusion order prohibiting the entry of unfairly traded articles regardless of their source may not be issued unless a violation of the Act has been established by substantial, reliable, and probative evidence.

Reasons for change

This amendment is motivated by the fact that discovery is usually difficult or impossible to obtain from respondents who have chosen not to participate in a section 337 investigation. For this reason, the bill authorizes the Commission to presume the facts alleged in the compliant to be true insofar as they involve a defaulting respondent, and to then issue relief affecting only that respondent. The amendment will therefore not affect participating respondents. Relief in the form of a general exclusion order must be supported by a Commission finding of violations of the Act based on substantial, reliable, and probative evidence. Complainants would declare at the time the last remaining respondent is found to be in default whether they are pursuing a general exclusion order.

Abuse of Process

Present law

No provision.

Explanation of provision

Section 162(a)(5)(c) also adds a new subsection to the Act authorizing the Commission to promulgate rules prescribing sanctions for abuse of discovery and abuse of process to the extent authorized by Rules 11 and 37 of the Federal Rules of Civil Procedure.

Reasons for change

The Committee believes that Commission rules prescribing sanctions for abuse of discovery and abuse of process are needed to provide the Commission and its administrative law judges with an additional tool by which to control the discovery processes.

Modification or Rescission of Exclusion Orders and Cease and Desist Orders

Present law

No provision.

Explanation of provision

Section 162(a)(6) amends the Act to require that persons who have previously been found in violation of section 337 and who have petitioned the Commission for modification or rescission of a remedial order bear the burden of proof in any Commission proceeding regarding their petition. The bill also provides that the Commission may grant the petition only on the basis of new evidence or evidence that could not have been presented during the proceeding that resulted in the remedial order or on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

Reasons for change

This provision is intended to codify existing Commission practices.

Confidential Information

Present law

No provision.

Explanation of provision

Section 162(a)(8) adds a new section to the Act prohibiting the disclosure, except under protective order or to employees of the Commission or the U.S. Customs Service, of confidential information submitted to the Commission or exchanged among the parties in connection with a section 337 investigation, without the consent of the person submitting the information.

Reasons for change

A great deal of information, disclosure of which would harm the competitive position of the submitter, is collected as part of the record in section 337 investigations. This information is disclosed, under protective order, to counsel involved in the investigation, but not to their clients or to the public. Companies have expressed concern that in the future the Commission might change its present policy regarding release, and decide to release information it no longer considers confidential, but which the submitter does consider confidential. This amendment addresses that concern by providing that disclosure may not occur without the submitter's consent.

Effective Date

The amendments made by section 162 would become effective with respect to Commission findings made on or after the date of enactment of this Act. The Commission is authorized to extend for an additional 3 months the deadline for completing any investigation due to be completed within 6 months after enactment which it declares to be complicated.

SECTION 163. ACTION REGARDING FOREIGN MARKET ACCESS BARRIERS AFFECTING INTERNATIONAL PROPERTY

Present law

No provision.

Explanation of provision

Section 163 provides a mechanism for a comprehensive and concerted action by the Administration in addressing foreign market access barriers affecting intellectual property rights. Within 1 year after enactment and annually thereafter the U.S. Trade Representative would be required to identify those foreign countries that maintain the most significant barriers or impediments to market access for "United States persons that rely on intellectual property protection." Such persons are defined as U.S. citizens, nationals, corporations or other U.S. legal entities whose principal line of business involves the creation, production or licensing of copyrighted literary or artistic works or the manufacture of patented products or products with a registered mask work.

In identifying such countries, the Trade Representative is directed to (1) identify and analyze, based on the annual report required under section 181 of the Trade Act, those acts, policies, and practices which constitute significant barriers to property protected by U.S. intellectual property rights; (2) decide whether the market for U.S. persons that rely on intellectual property protection in that country is substantial; and (3) take into account information submitted by U.S. industry representatives.

From the countries identified above, the U.S. Trade Representative is required to identify "priority countries" and establish a timetable for carrying out consultations and negotiations with such priority countries. Guidelines are provided for the Trade Representative in selecting priority countries. If he determines that available resources are inadequate to effectively pursue negotiations with all countries he identifies, particularly in view of other negotiating objectives, he may select only those countries with the largest potential market for, and with the most onerous market access barriers to, persons relying on intellectual property protection. He also may exempt any foreign country for which he considers such consultations would be detrimental to U.S. interests.

After identifying such priority countries and establishing a timetable for negotiations, the Trade Representative is directed to enter into consultations and negotiations, in accordance with the prescribed timetable, in order to seek a trade agreement which removes such barriers and provides for fair and equitable market access for products of U.S. persons that rely on intellectual property protection to such countries. The President is granted negotiating authority for a 5-year period to enter into such agreements, which would be subject to the fast-track implementation procedures of section 102 (c), (d), (e) and (f) and section 151 of the Trade Act of 1974.

In the event that the President is unsuccessful in reaching an agreement with a priority country within 2 years of its designation as such, the President "shall take such actions as he deems appropriate" including but not limited to, any action under section 301, with respect to any product or service of such country. If the President determines, however, that the consultations or negotiations with that priority country are making substantial progress and he provides written certification of this at 12-month intervals, the President may defer taking any actions against such country.

On a biennial basis, the President is required to report to the appropriate Committees of the Congress on the extent and effect of efforts undertaken during such period to obtain fair and equitable market access in each priority country for U.S. persons that rely upon intellectual property protection.

Finally, the Trade Representative is directed to consult with the appropriate Committees of the Congress, interested agencies, industry and labor advisory committees and other interested parties in identifying priority countries, establishing timetables and conducting negotiations, preparing the report to Congress and in determining whether action is appropriate under the Trade Act of 1974 with respect to any foreign barrier.

Reasons for change

Section 163 is intended to address the unique market access problems faced by United States persons that rely upon intellectual property protection. This definition encompasses such industries as motion pictures, computer software, books, records, pharmaceuticals, and semiconductors.

These industries encounter two unique problems in gaining access to markets. First, many of these industries are classified as "cultural" by foreign governments, and the issues of market access for these "cultural industries" are thus removed from traditional trade negotiations. Unlike virtually all other market access problems, many foreign governments refuse even to discuss those trade barriers embedded in their cultural policies. The Committee is deeply concerned about practices of foreign governments to impose trade barriers under the guise of "cultural sovereignty".

Second, many of these industries have extremely short product life-cycles. In such industries as computer software, chemicals, and pharmaceuticals, for example, requiring United States companies to await the outcome of lengthy multilateral trade negotiations to gain improved access abroad could have a significant adverse impact on their international competitiveness.

These market access barriers are encountered in both industrialized and developing countries and they require concerted efforts and a credible threat of trade sanctions in the event that foreign governments refuse to take action to remove them. The Committee expects the U.S. Trade Representative to select more than a token number of "priority foreign countries" each year because of the pervasiveness of these problems.

In instances where a "priority foreign country" refuses to enter into an agreement under this provision, and where the consultation or negotiations with that foreign country are not making substantial progress, the Committee expects the President to take action he deems appropriate under section 163(d) that reflects the economic effect of the foreign trade barriers in question on United States persons that rely upon intellectual property protection.

This new provision of United States trade law is intended to establish a comprehensive and effective program to open foreign markets, through negotiations, for U.S. persons that rely on intellectual property.

SECTION 164. NEGOTIATING OBJECTIVES REGARDING INTELLECTUAL PROPERTY RIGHTS

Present law

No specific provision.

Explanation of provision

Section 164 sets forth specific negotiating objectives for the President under section 102 with respect to intellectual property rights. Such objectives are:

(1) to seek enactment and effective enforcement by foreign governments of laws which adequately recognize and protect U.S. intellectual property rights; and

(2) to strengthen bilateral and multilateral international rules and dispute settlement procedures against trade-distorting practices arising from inadequate national protection and enforcement of intellectual property rights.

With respect to the latter point, the President is directed to seek early adoption of the GATT Anti-Counterfeiting Code is well as the development of substantive norms and standards in the GATT, in cooperation with the World Intellectual Property Organization (WIPO) and other international technical organizations, providing for the protection and enforcement of other forms of intellectual property. Finally, the President is urged to supplement and strengthen standards for protection and enforcement in existing intellectual property conventions and seek an expansion of coverage in such conventions to include new and emerging technologies and elimination of discrimination or unreasonable exceptions or preconditions to protection.

Reasons for change

The Committee is deeply concerned that the international competitiveness of many U.S. companies, has been significantly adversely affected by foreign countries failure to adequately protect U.S. intellectual property rights. Many of the more competitive U.S. industries, such as high-tech, pharmaceuticals, and chemicals, depend heavily on intellectual property protection in order to prevent competitors from reaping the financial benefits of their heavy expenditures in research and development and technological innovation. The President is urged to place a high priority on achieving the negotiating objectives set forth in this section. An international anti-counterfeiting code is vital to the U.S. interest as is an overall improvement in the recognition and enforcement of intellectual property rights worldwide.

Subtitle C—Trade Negotiating Objectives and Authority

Subtitle C contains objectives for the United States in a new Round of GATT multilateral trade negotiations and in other types of agreements as appropriate with particular countries. The President is granted extended authority to enter into trade agreements, subject to certain additional procedural linkages for achieving these objectives.

SECTION 171. REFERENCES TO TRADE ACT OF 1974

Section 171 states that any amendments or repeals contained in subtitle C of titles, sections, subsections, or other provisions refer to provisions of the Trade Act of 1974, unless otherwise specified.

SECTION 172. OVERALL AND PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES

Present law

Sections 103 through 108 of the Trade Act of 1974 set forth overall trade negotiating objectives, as well as objectives for sector negotiations, international safeguard procedures; access to supplies, and bilateral agreements and agreements with developing countries. Section 121 specifies particular areas in which the President must seek revision of the GATT. The Trade and Tariff Act of 1984 amended the 1974 Act to add objectives for negotiations on services, high technology products, and foreign direct investment.

Explanation of provision

Section 172 of the bill sets forth overall and principal negotiating objectives for the United States to achieve under the tariff and nontariff trade agreement authorities of sections 101 and 102 of the Trade Act of 1974. The overall trade negotiating objectives of the United States set forth under section 172(a) are:

(1) to achieve a more open, fair, and nondiscriminatory international trading system for goods, services, and foreign investment;

(2) to obtain equitable and reciprocal competitive opportunities, overall and in individual sectors; and

(3) to expand and improve GATT rules and procedures in order to restore confidence in the relevance and effectiveness of the international trading system and its institutions.

Section 172(b) sets forth the principal specific trade negotiating objectives of the United States under section 101 and 102 of the Trade Act as follows:

1. To improve the GATT dispute settlement mechanisms and procedures so as to ensure expeditious and decisive resolution of all types of disputes on matters covered by GATT rules.

2. To strengthen GATT rules on subsidy practices and countervailing measures, particularly by prohibiting the use of

export subsidies on primary products, treating other forms of injurious government intervention (e.g., resource subsidies, subsidized inputs) as prohibited subsidies, sanctioning special penalty measures to discourage the persistent use of injurious subsidies, and authorizing countermeasures against subsidized displacement of sales in third country markets.

3. To enhance the GATT through adoption of a principal or a code against the denial of internationally-recognized worker rights as means for countries or industries to gain competitive advantage in international trade.

4. To strengthen GATT rules on dumping practices and anti-dumping measures by developing procedures and measures to determine, deter, counteract injurious diversionary dumping practices; expediting procedures to provide more timely anti-dumping relief; developing effective means to counteract displacement by dumping in third country markets; and authorizing special sanctions to deter repetitive dumping.

5. To develop rules to limit and counteract injurious industrial export targeting practices.

6. To bring about fuller participation of developing countries in the international trading system by reducing their reliance on special and differential treatment and by requiring reciprocal benefits and assumption of equivalent obligations as they attain more advanced levels of economic development.

7. To develop principles, rules, and procedures and to reduce specific barriers or restrictions concerning newer and future forms or conditions of trade, particularly trade in services and high technology products, investment flows and high technology transfer referred to in section 104A of the Trade Act of 1974 and protection and enforcement of intellectual property rights referred to in section 104B of the 1974 Act.

8. To achieve more open and fair trade in agricultural commodities by developing, strengthening, and clarifying rules to discipline restrictive and trade-restoring import and export practices and by eliminating and reducing specific trade constraints.

9. To improve the operation and expand the coverage of, and participation by countries in, the agreements concluded in the Tokyo Round of GATT multilateral trade negotiations. For example, the coverage of the code on government procurements principles and procedures should be expanded to apply to additional purchasing entities and products in order to obtain further access to government purchasing markets.

10. To strengthen GATT rules regarding the criteria and procedures that governments use in applying all types of safeguard measures on exports or imports to limit injurious competition, in order to ensure transparency and to promote economic adjustment in the use of such measures.

11. To develop principles, rules, and procedures concerning offsets and other countertrade requirements, in order to minimize any adverse effects of such requirements on domestic products and industries.

The purpose of this objective is not to restrict the use of countertrade requirements which expand export trade. Rather, the intent is to ensure that the use of such requirements is consistent with U.S. overall objectives for fair and more open trade and do not cause an adverse impact on U.S. industries, particularly in the high technology area, such as through requirements for coproduction or technology transfer.

12. To promote equitable and reciprocal world market access by eliminating, reducing, or harmonizing specific tariff and nontariff barriers on goods or services of export potential. While agreements should be sought on international principles and rules which apply generically across-the-board to discipline particular types of practices, equal effort should be made in negotiations to obtain liberalization of existing specific nontariff and tariff barriers.

Particular attention should be focused on eliminating trade barriers identified in the USTR annual report required under section 181 of the Trade Act of 1974 and on reducing disparities between U.S. and foreign tariff levels on particular products that impede U.S. bilateral access to foreign markets. Many examples have been brought to the Committee's attention of U.S. duty-free treatment or low duties on specific products or product sectors which permit foreign access to the U.S. market, whereas U.S. exporters face high duties imposed on those same products which severely restrict access to foreign markets.

13. To develop rules that impose a greater responsibility on countries with large and persistent current account surpluses to undertake policy changes aimed at restoring current account equilibrium. Measures could include immediate or faster implementation by such countries of trade agreements where feasible and appropriate.

The post-war Bretton Woods system—as embodied in the GATT and the Articles of Agreement of the International Monetary Fund—generally places the greatest burden of adjustment on countries experiencing a deficit in their balance of payments. That in many ways is not unexpected; because regardless of whatever international agreements may or may not exist, deficit countries generally *must* adjust their policies or face the prospect of default or the inability to pay for necessary imports. The Committee believes, however, that the absence of meaningful incentives or pressures for large and persistent surplus countries to adjust their policies to reduce their surpluses leaves an undesirable imbalance in the GATT system. As a result, the Committee believes it essential that U.S. negotiators address this issue in any new trade negotiations and strive for rules which impose a greater burden of adjustment on large surplus countries. At a very minimum, the Committee believes that countries with large and persistent surpluses should implement tariff cuts and any other trade agreement provisions more rapidly than other countries, to the extent that the agreements lend themselves to such accelerated implementation.

14. To develop mechanisms to assure greater coordination, consistency, and cooperation between international trade and monetary systems and institutions.

As stated in section 172(c), these overall and principal negotiating objectives are to be achieved, to the maximum extent feasible, through multilateral trade agreements. Such agreements should be negotiated with the broadest possible participation of both developed and developing countries to provide, on a reciprocal and mutually advantageous basis, for (a) the reduction, elimination, or harmonization of trade barriers and other trade distorting measures, and (b) the development, clarification, and extension of principles, rules, and procedures to govern that trade. However, bilateral agreements, or so-called "plurilateral" agreements with certain "like-minded" countries which are willing to participate in an agreement on particular matters, should be negotiated to achieve the objectives in circumstances where such agreements would be more effective or appropriate or if multilateral agreements are not feasible.

Reasons for change

The listing of U.S. trade negotiating objectives under section 172 updates objectives previously stated in the Trade Act of 1974 for the Tokyo Round of GATT negotiations to reflect more current trade issues and conditions of trade that need to be addressed, particularly in the upcoming new Round of GATT negotiations. The particular order of the objectives does not indicate any priority ranking. Each of the objectives reflects concerns raised by the Committee, other Members of Congress, the Administration, and the private sector about the inadequacy of the existing international rules and procedures in particular areas.

The basic thrust of these objectives is to restore confidence in the relevance and adequacy of international trading rules with respect to traditional trade practices and newer forms of injurious government intervention in the marketplace, as well as to liberalize specific barriers and restrictions to goods, services, and investment. The strengthening of mechanisms and procedures for dispute settlement is equally essential for restoring the credibility of international trade institutions. Finally, the objectives highlight the important interrelationship between trade and monetary policies and institutions.

SECTION 173. EXTENSION OF TRADE AGREEMENT AUTHORITY

Section 173 of the bill extends authorities for the President to negotiate and enter into tariff and nontariff barrier agreements.

Present law

The President currently does not have authority to enter into tariff agreements and to proclaim the reduction, elimination, or continuation of U.S. duties necessary or appropriate to implement such agreements. The most recent grant of basic tariff negotiation and proclamation authority to the President under section 101 of the Trade Act of 1974 for the Tokyo Round GATT multilateral trade negotiations expired on January 2, 1980. Section 124 of the Trade Act further provided the President, for another two years, residual authority to negotiate tariff adjustments within narrow limits. As section 124 has not been renewed since its expiration on

January 2, 1982, the President currently does not have tariff proclamation authority.

Section 101 of the Trade and Tariff Act of 1984 added authority under section 102(b) of the Trade Act for the President to enter into bilateral agreements (such as free trade areas) until January 3, 1988, to reduce or eliminate duties subject to certain procedural conditions. However, the President cannot proclaim any duty modifications under such agreements unless the Congress approves implementing legislation under the expedited procedure for trade agreements.

Section 102 of the Trade Act of 1974 authorizes the President to negotiate and enter into trade agreements until January 3, 1988, to harmonize, reduce, or eliminate nontariff barriers or other trade-distorting measures. Such agreements may also provide for the prohibition or, or limitations on, the imposition of such barriers or other distortions.

In contrast to traditional tariff proclamation authority, however, a nontariff barrier agreement negotiated under section 102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless the President adheres to certain requirements for presentation to the Congress and implementation legislation approving the agreement and any changes in U.S. law is enacted into law. Special consultation and expedited "fast track" no amendment procedures apply for Congressional consideration and approval of nontariff and bilateral tariff agreements under sections 102(c)–(f) and 151 through 154 of the Trade Act of 1974. No trade agreement provisions entered into under section 102 authority may enter into force for the United States unless there is compliance with these requirements.

Explanation of provision

Section 173(a)(1) restores the basic authority under section 101 of the Trade Act of 1974 until January 3, 1989, for the President to enter into trade agreements with foreign countries and to proclaim modifications or continuation of existing duties or duty-free treatment as of January 1, 1987, or additional duties, as he determines to be required or appropriate to carry out any such agreement.

However, as provided under section 173(c), the President may not proclaim under section 101 authority the reduction or elimination of any duty on any article that, on the date of the enactment of this Act, is not designated as an eligible article for duty-free treatment under the GSP program. These articles include statutory exclusions from eligibility as well as articles excluded through administrative action as import-sensitive. Any provision of a section 101 trade agreement that reduces or eliminates a duty on any GSP ineligible article must be approved by the Congress in implementing legislation submitted under the "fast track" procedure applicable to trade agreements entered into under section 102. The procedural requirements of section 102 apply, including consultations with the committees on the implementing legislation prior to its submission.

Reductions under section 101 of any existing U.S. duties above 5 percent ad valorem as of January 1, 1987, cannot exceed 60 percent; duties 5 percent ad valorem or below may be eliminated.

Duty increases cannot exceed the higher of 20 percent ad valorem above existing rates or 50 percent above column 2 rates.

The staging requirements under section 109 of the Trade Act of 1974 apply, which require that any duty reduction exceeding 10 percent of existing levels be phased in over 10 years or by no more than 3 percentage points per year. Existing pre-negotiation requirements under sections 131-135 of the Trade Act (ITC advice, hearings, private sector advice) also apply, as well as the exclusion under section 127(b) of the Trade Act of items subject to import relief or national security actions.

Section 173(a)(2) extends the existing authority under section 102 of the Trade Act for the President to enter into nontariff barrier agreements or bilateral tariff agreements until January 3, 1989.

Section 173(b) provides an automatic extension of both the tariff and nontariff barrier agreement authorities for an additional two years until *January 3, 1991,* if the USTR submits a report to the House Committee on Ways and Means and the Senate Committee on Finance certifying that sufficient progress was made under the trade agreement authorities to justify continuation of the negotiations and continuation is likely to achieve the overall and principal U.S. negotiating objectives set forth in section 172.

Reasons for change

The amendments extend tariff and nontariff agreement authorities in order to provide the President the necessary tools to achieve negotiation objectives enumerated under section 172. The authorities are extended for only one year, subject to automatic extension for an additional two years, to create maximum incentive and momentum for negotiations as soon as possible and a timetable to achieve agreements at the earliest possible date. The reporting requirement by November 1989 is also intended to provide negotiating momentum as well as accountability to the Congress for progress made. While some issue areas are very complex and considerable time may be needed to develop consensus, previous Rounds have not concluded agreements until expiration of the U.S. authority was imminent. The President may seek further extension of the trade agreement authorities if warranted at that time.

Granting authority to the President to proclaim tariff changes, while reserving implementation of changes in U.S. laws to modify other trade barriers or practices to approval by the Congress is consistent with historic practice since enactment of the Reciprocal Trade Agreements Act of 1934 (Public Law 73-316). Since 1934, the Congress periodically has empowered the President to negotiate and to proclaim reductions in tariffs under reciprocal trade agreements, subject to specific conditions and limitations. At the same time, however, the Committee does not believe it appropriate, particularly in view of the Nation's huge trade deficit, to authorize the President to proclaim any duty reductions on import-sensitive items as identified under the GSP program without Congressional review and approval.

The purpose of the approval process for nontariff barrier and bilateral tariff agreements is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements prior to entry into an agreement and introduction of an implementing bill ensure that Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice are fully taken into account and any problems resolved in advance, while at the same time ensuring expeditious action on the final agreement and implementing bill. This process was used successfully in approving the Tokyo Round trade agreements and implementing changes in U.S. law under the Trade Agreements Act of 1979.

SECTION 174. AGREEMENTS REGARDING NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE

Present law

Section 102(c)-(f) and sections 151-154 of the Trade Act of 1974 prescribe the following "fast track" procedures for Congressional approval of trade agreements entered into under section 102:

(1) Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction on subject matters affected by the agreement, especially regarding issues of implementation.

(2) The President must notify the Congress of his intention to enter into the agreement 90 days before doing so, and thereafter promptly publish his intention in the Federal Register.

(3) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate. An implementing bill must contain provisions approving the agreement and the statement of administrative action, and any amendments to current law or new authority required or appropriate to implement the agreement.

(4) The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President. This bill is referred to the committee or committees of jurisdiction. The committee have 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period.

(5) Each House votes on the bill within 15 legislative days after the measure has been received from the committee or committees. A motion in the House to proceed to consideration of the implementing bill is privileged and not debatable. Amendments are not in order, and debate is limited to not more than 20 hours.

Although statutory, the procedures in paragraphs (3), (4), and (5) were enacted as an exercise of the rulemaking powers of each House of Congress, and are decreed to be a part of each House's rules. The procedures may be changed in the same manner as any other rules.

In order to ensure that a foreign country which benefits from a section 102 trade agreement is also subject to the obligations, the President *may* recommend to Congress in the implementing bill and statement of administrative action that the benefits and obligations apply solely to the parties to the agreement, if such application is consistent with the terms of the agreement.

Explanation of provision

Section 174 of the bill amends the procedural requirements under section 102 of the Trade Act of 1974.

Section 174(a) amends section 102(b) of the Trade Act to require the Commissioner of Customs to issue such rules and regulations as are necessary to prevent the transshipment of articles subject to quantitative import restrictions under U.S. law through a foreign country with whom the United States has entered into a bilateral trade agreement.

Section 174(b) amends section 102(c) to add the requirement that the consultations with committees of Congress prior to entry into any trade agreement under section 102 include the nature of the agreement and how and to what extent it achieves overall and principal U.S. negotiating objectives under section 172 of this Act, as well as all matters relating to implementation of the agreement.

Section 174(c) amends section 102(e)(2)(B) of the Trade Act relating to the statement of the President to the Congress which must accompany any trade agreement and draft implementing bill. In addition to the matters which presently must be covered in the statement, the President must also state the agreement achieves overall and principal U.S. negotiating objectives set forth in section 172, and his reasons as to how and to what extent the agreement achieves them and why and to what extent the agreement does not achieve other such objectives.

Section 174(d) removes the authority for the President to submit nontariff trade agreements under the section 102 "fast track," no amendment implementation procedure before either an international monetary conference on the exchange rate system is convened or the President reports to the Congress that it cannot be convened because one or more major currency countries is unwilling to participate.

Section 174(d) also amends section 102(f) to *require* the President to recommend that trade agreement benefits and obligations apply solely to signatory countries to the agreement, if such treatment is appropriate and consistent with the terms of the agreement.

Reasons for change

The main purpose of the amendments is to provide stronger linkages between the exercise of the trade agreement authorities extended under section 173 and achievement of U.S. negotiating objectives under section 172, and greater accountability to the Congress in the achievement of these objectives. The purpose of the stronger conditional MFN requirement is to ensure that trade agreement benefits provided by the United States are reciprocated by benefits from foreign participants, to the extent consistent with the purposes of the agreement.

Although the U.S. dollar has depreciated considerably since the September 22, 1985, announcement by the Group of Five (G-5) Ministers, the Committee believes that the issue of exchange rates stability merits continued attention. The current exchange rate of the dollar clearly is preferable from a competitiveness point of view to the rates which prevailed throughout much of 1985 and the years previous. However, the Committee is not sanguine about the prospects of the current exchange rate remaining where it is, or even improving. The dollar could just as easily move sharply in the opposite direction, back to the high levels which have caused so much damage to this country's trading sector. Given the crucial role played by the exchange rate in U.S. international competitiveness, the Committee believes that Congressional consideration of any multilateral trade agreements should be conditioned on the President's pursuit of an exchange rate system which provides more stability and certainty to U.S. exporters and importers than the current system. In saying this, the Committee recognizes the primary jurisdiction of the Committee on Banking, Finance and Urban Affairs in this area.

Finally, the amendment concerning transshipments is intended to ensure that the necessary rules and regulations are in place to prevent circumvention of U.S. quantitative import restrictions by pass through any free trade areas entered into under section 102 authority.

SECTION 175. COMPENSATION AUTHORITY

Present law

Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements with foreign countries for the purpose of granting new concessions as compensation only for section 203 import relief actions, in order to maintain the general level of reciprocal and mutually advantageous concessions. The President may proclaim duty reductions of up to 30 percent from existing levels as he determines necessary or appropriate to carry out the agreement, except that section 101 authority (up to 60 percent reductions and elimination of duties 5 percent or below) applies while it is in effect.

Explanation of provision

Section 175 of the bill amends section 123 of the Trade Act to expand the authority for the President to enter into and proclaim compensation agreements to cover import restrictions imposed under section 301 of the Trade Act or increases in or the imposition of duties or other import restrictions by legislation or tariff reclassification. The authority may be used only if necessary or appropriate to meet U.S. international obligations.

Reasons for change

The amendment recognizes that existing compensation authority is inadequate to meet the various circumstances in which it may be necessary or appropriate for the United States to offer compensation to particular foreign countries in order to meet GATT obligations, as an alternative to possible foreign retaliation.

SECTION 176. TARIFF AGREEMENTS WITH CANADA

Present law

Under section 102 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, the President has the authority to enter into a bilateral trade agreement with any country to reduce or eliminate tariffs, but such an agreement is subject to Congressional approval under the fast-track implementation procedures set forth in sections 102 and 151 of the Trade Act. The authority to enter into such an agreement expires on January 3, 1988.

Explanation of provision

Section 176 would add a new provision to the Trade Act of 1974 authorizing the President to enter into an agreement with Canada to reduce or eliminate the duties on a specific list of tariff items. The President would have the authority to proclaim the changes in duties on these products without seeking the approval of Congress. However, he is authorized to exercise this authority only to the extent that tariff concessions of approximately equivalent value are granted by the Government of Canada in exchange for the reductions authorized under this section.

The following products would be covered under the scope of this negotiating authority: frozen cranberries; dialysis cyclers; tea-packaging paper; dried fababeans; cat litter composed of paper or gypsum; mechanics' tool boxes; medical tubing; synthetic fireplace logs; certain spirits; miners safety lamps, components, and battery chargers; and computerized paper cutter control retrofit units. The President's authority to negotiate on these products is limited to the specified tariff items accompanying each article description in section 176.

Reasons for change

On December 10, 1985, the President notified the House Committee on Ways and Means and the Senate Committee on Finance of his intention to enter into a comprehensive bilateral trade negotiation with Canada under the authority of section 102. Since neither Committee has disapproved such negotiations during the 60 legislative-day period provided in section 102, it is expected that the comprehensive talks will proceed in the coming months. It is expected, however, that these talks may take several years to complete.

In order to facilitate such negotiations and to create some momentum toward a comprehensive agreement, section 176 authorizes the President to proclaim the reduction or elimination of duties on a finite list of articles which are of importance to the Canadian Government in exchange for tariff concessions of equivalent value on U.S. exports to Canada. If an agreement is reached, such tariff reductions can be implemented without further Congressional approval at any time within the 5-year period for which the President has been granted such authority.

The Committee is hopeful that such an interim agreement will not only liberalize and enhance bilateral trade in the included products but will also demonstrate to both Governments the benefits of improved access to each other's market and result in more significant dismantling of trade barriers in the comprehensive talks.

SECTION 177. TIME FOR SUBMISSION OF CERTAIN REPORTS

Present law

Section 135 of the Trade Act of 1974, as amended, establishes private sector advisory committees to represent industry, agriculture, labor, services, and other domestic interests in providing input and advice to the USTR and other agencies concerning trade policy issues and negotiations.

Each private sector advisory committee must meet at the conclusion of each trade agreement to provide a report to the President, the Congress, and the USTR including an advisory opinion as to whether and to what extent the agreement promotes U.S. economic interests and provides for equity and reciprocity within the particular sector or functional area.

Explanation of provision

Section 177 of the bill amends section 135 to require each private sector advisory committee also to report whether and to what extent each trade agreement achieves the U.S. overall and principal negotiating objectives set forth in section 172 of this Act.

Each report on a section 102 trade agreement must be provided no later than the date the draft implementing bill is submitted to the Congress.

Reasons for change

The amendments with respect to reporting by private sector advisers are consistent with the changes made under section 174 to ensure that U.S. negotiating objectives are achieved to the extent possible and that affected domestic interests play an important role in the effort and assessment of results.

SECTION 178. NEGOTIATING OBJECTIVES REGARDING HIGH TECHNOLOGY ACCESS

Present law

No provision.

Explanation of provision

Section 178 amends section 104A of the Trade and Tariff Act of 1984 (19 U.S.C. 2114b) by adding a new paragraph (d), "Access to High Technology." Section 178 establishes as a new principal U.S. negotiating objective the elimination or reduction of foreign barriers to, and foreign government acts, policies, or practices which limit, equitable access by U.S. persons to foreign-developed technology. Among the measures specified as a possible focus of negotiation are barriers, acts, policies, or practices which have the effect of restricting U.S. participation in government-sponsored research and development projects; denying equitable U.S. access to government-held patents; requiring the approval or agreement of government entities, or imposing other forms of government intervention, as a condition for granting licenses to U.S. persons (with the exception of controls on the export of critical military technology); and otherwise denying equitable U.S. access to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

Reasons for change

According to a recent study by the Office of Technology Assessment, Japan has a nearly 5 to 1 advantage in technology exchange with this country; and imbalances of up to 10 to 1 exist on technology exchanges applicable to specific industries such as machine tools. Given the importance of technological innovation to the international competitiveness of the United States, the existing imbalance in access to technology must be dealt with in priority fashion. For this reason, the Committee is designating access to foreign technology as an important objectives for U.S. negotiators to pursue with our trading partners.

Subtitle D—Functions of the United States Trade Representative

Sections 181–183 of the bill strengthen the role of the U.S. Trade Representative in the trade policy process of the Executive branch and require the setting of an annual trade policy agenda.

SECTION 181. TRADE POLICY FUNCTIONS

Present law

Section 141 of the Trade Act of 1974, as amended, establishes the Office of the U.S. Trade Representative in the Executive Office of the President (1) to be the chief U.S. representative for trade negotiations; (2) to report and be responsible to the President and the Congress on the administration of the trade agreements program; (3) to advise the President and the Congress on matters related to the trade agreements program; and (4) to chair the interagency trade organization.

Section 242 of the Trade Expansion Act of 1962, requires the President to establish an interagency trade organization (the Trade Policy Committee structure) consisting of the USTR and the heads of other agencies as the President designates. The purpose of the organization is to assist him in carrying out his trade functions, including making recommendations on basic policy issues arising in the administration of the trade agreements program.

Explanation of provision

Section 181(a) amends section 141(c) of the Trade Act to add to his existing functions those functions enumerated in the Reorganization Plan of 1979 which specify that the USTR shall

(1) have primary responsibility for developing and for coordinating implementation of U.S. international trade policy, including commodity matters and direct investment matters related to international trade policy;

(2) serve as the principal advisor to the President on international trade policy and advise the President on the impact of other U.S. Government policies on international trade;

(3) have lead responsibility for the conduct of international trade negotiations;

(4) issue policy guidance to departments and other agencies on basic issues of policy and interpretation arising in the exercise of international trade policy functions; and

(5) act as principal spokesman of the President on international trade. The USTR must consult with, and be advised by, the interagency trade organization in performing his functions.

Section 181(b) amends section 242(a) of the Trade Expansion Act of 1962 to specify that the interagency trade organization will be composed of the USTR as chair, and the Secretaries of Commerce, State, Treasury, Agriculture, and Labor. The USTR may invite representatives from other agencies, as apppropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. The organization shall be advisory to the USTR, as well as assist the President in carrying out his functions under the trade laws.

Reasons for change

The basic purpose of the amendment is to reemphasize the intent of Congress, previously expressed in the Trade Act of 1974 and further clarified in the Reorganization Plan of 1979, that the USTR has the primary responsibility in the Executive branch as chief adviser to the President and to the Congress for the development, coordination, and administration of U.S. trade policy. This statutory intent of the Congress has not been fulfilled in recent years, particularly as the membership of the interagency trade organization has greatly expanded through Executive order and as non-statutory committees and councils have been formed and headed by other Cabinet officials to coordinate economic policy issues.

The Committee emphasizes that the delegation by Congress of its Constitutional power to regulate foreign commerce in many areas is meant to be exercised by the U.S. Trade Representative on behalf of the President, not by other Cabinet officers. The amendments to the interagency trade organization also make clear that trade policy should be developed and coordinated by the USTR with only those agencies having the most direct interest and acting in an advisory capacity. The proliferation of agencies involved in trade policy formulation with only a general overall interest has greatly increased the difficulty of obtaining a consensus on an overall U.S. trade policy as well as agreement on action with respect to specific issues.

SECTION 182. FAIR TRADE ADVOCATES BRANCH

Present law

Section 339 of the Tariff Act of 1930, as added by section 221 of the Trade and Tariff Act of 1984, established a Trade Remedy Assistance Office in the International Trade Commission to provide full information to the public about remedies and benefits available under the various trade laws and the procedures for obtaining them. Each administering agency must provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications to obtain these remedies and benefits.

Explanation of provision

Section 182 amends section 141 of the Trade Act of 1974 to establish a Fair Trade Advocates Branch in the Office of the U.S. Trade Representative to assist qualifying industries in obtaining remedies and benefits under the countervailing and antidumping duty laws and section 337 of the Tariff Act of 1930. The Branch shall assist (1) by preparing and initiating cases other than those which are frivolous; (2) by acting as an advocate in proceedings on such cases before the administering agencies; and (3) by pursuing administrative and judicial appeals of such cases, where appropriate.

Qualifying industries would include (1) any small business which has neither the adequate internal resources or financial ability to obtain qualified legal or technical assistance; (2) any industry which, because of its competitive position or location in export markets, would suffer reprisals or other serious adverse economic impact if it pursued the case on its own; and (3) any industry whose case is meritorious but which lacks adequate resources to obtain remedies. Decisions as to qualifying industries would not be subject to agency or judicial review. Administering agencies must provide technical and other assistance to the Branch in preparing and filing petitions and applications for remedies and benefits.

Reasons for change

The purpose of the amendment is to assist primarily small businesses and businesses that are already suffering economically to such a degree that they are unable to pursue adequately legitimate grivances and obtain remedies under the unfair trade statutes because of the costs and delays in obtaining such relief.

The Branch would perform the functions for qualifying businesses of preparing cases, obtaining remedies and benefits from the administering agencies, and pursuing appeals as a government function. The government role will remove the burden on small or economically distressed businesses of trying to overcome the resources of foreign governments, exporters, or importers in pursuing cases. Since countervailing and antidumping duties are deposited in the U.S. Treasury, it is appropriate for the government to bear the expense in certain cases of obtaining benefits and remedies for qualifying businesses. the USTR would have discretion to dismiss or not pursue cases which are frivolous or assistance sought by businesses which do not meet the qualifying criteria.

SECTION 183. TRADE POLICY AGENDA

Present law

No provisions.

Explanation of provision

Section 183 requires the USTR by March 1 of each year to submit a statement to the House Committee on Ways and Means and the Senate Committee on Finance of (1) the U.S. trade policy objective and priorities for that year and the reasons therefor; (2) actions proposed or anticipated during the year to achieve these objectives, including actions under the trade laws and any negotiations contemplated; and (3) any proposed legislation necessary or appropriate to achieve these objectives. The USTR must consult with appropriate private sector advisers and with the Committees before submitting the statement and consult periodically with the Committees on the status, results, and any developments which may require or result in changes of any objectives or priorities.

Reasons for change

The purpose of the provision is to address the commonly-held view that United States trade policy consists primarily of responses to particular current issues, without a clear, consistent overall policy direction or basis in agreed national objectives. The amendment is intended to fill this void and to focus thinking and attention annually on the development of an overall U.S. trade policy with a specific agenda of objectives and priorities, developed by the USTR in consultation with the Congress and private sector advisers. This consultative process, which would continue throughout the year as objectives and priorities are achieved or change in light of actual developments, is intended to rebuild a national consensus on the direction of U.S. trade policy.

The requirement of an annual trade policy statement is also consistent with other provisions in Subtitle D to enhance the role of the USTR as the primary adviser to the President and to the Congress on international trade policy and administration of the trade agreements program. The statement is intended to focus higher priority attention to U.S. international trade interests and objectives and their role in overall national economic policy.

Subtitle E—Miscellaneous Trade Law Provisions

SECTION 191. IMPORTS AFFECTING NATIONAL SECURITY

Present law

Section 232 of the Trade Expansion Act of 1962, as amended, requires the Secretary of Commerce, upon request or on his own motion, to conduct an investigation to determine the effects of imports of an article on the national security. He must report his findings and recommendations to the President within one year. If the Secretary finds "an article is being imported in such quantities or under such circumstances as to threaten to impair the national security," the President, unless he reverses the determination, must take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so they will not threaten to impair the national security. There is no time limit for the President's decision.

Explanation of provision

Section 191 of the bill amends section 232(b) of the Trade Expansion Act of 1962 to require the Secretary of Commerce to report his findings and recommendations to the President within 90 days rather than one year. The Secretary may extend this period up to a maximum period of 180 days if he determines the investigation is extraordinarily complicated.

Section 191 also imposes a 30-day time limit after he receives the report for the President to determine whether he concurs with the Secretary's advice and, if so, to determine the nature and duration of the action which must be taken to adjust the imports. The President must implement any action within 15 days after his determination. The 30-day period applies to decisions pending as of the date of enactment as well as to prospective cases.

Reasons for change

The basic need for the amendment arises from the lengthy period under present law—one year for investigations and no time limit for decisions by the President—before actions are required to remove a threat posed by imports of particular products to the national security. The Committee believes that if the national security is being affected or threatened, this should be determined and acted upon as quickly as possible. Any extension of the 3-month time frame in extraordinarily complicated cases should be based on the same criteria used by the Secretary in determining such cases under the countervailing duty and antidumping duty laws.

SECTION 192. REALLOCATION OF GSP BENEFITS TO LATIN AMERICAN DEBTOR NATIONS

Present law

Section 504(c) of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, authorizes the President as of January 4, 1987, to waive the so-called "competitive need" dollar and percentage limits that apply to duty-free GSP treatment on individual eligible products from particular beneficiary developing countries. The President may waive these limits by an amount not to exceed 30 percent of total GSP benefits granted in the preceding year, of which not more than one-half may be waived for more advanced developing countries.

Any waiver must be based on a determination by the President that it is in the national economic interest, with great weight given to the extent to which the country will provide equitable and reasonable market access to U.S. products and provide adequate protection and enforcement of intellectual property rights. The International Trade Commission must also provide advice on whether any U.S. industry is likely to be adversely affected by a waiver.

Explanation of provision

Section 192 of the bill amends section 504(c) of the Trade Act to require the President to waive competitive need limits with respect to eligible articles from Latin American debtor nations which meet certain criteria, but only if such countries qualify individually for a waiver under the existing statutory criteria. The aggregate amount of waivers for such nations under this provision would be determined by the total amount of new competitive need exclusions in the preceding year for all GSP beneficiaries (about $839 million in 1985). This amount would be allocated among qualifying Latin American debtor countries on the basis of additional criteria set forth in the amendment. The waiver amounts would count against and be included in the total available waiver "pool" (about $4.0 billion in 1985). The ITC advice on whether a domestic industry is likely to be adversely affected would also apply.

Reasons for change

The purpose of the amendment is to provide authority to grant through GSP a greater opportunity for Latin American nations with large debt burden to reduce those levels through expanded export trade, if they otherwise qualify for such waiver benefits. The criteria for selecting countries which qualify and for allocating waiver amounts among such countries are designed to ensure that additional GSP benefits would be allocated only to countries whose debt burden is held by U.S. banks and international organizations, not by foreign banks. Countries which do not meet the existing waiver authority criteria, particularly the provision of equitable and reasonable market access for U.S. exports would not be eligible for consideration. Thus, the provision can be used as further leverage to achieve other GSP objectives. The total level of annual GSP available benefits would not increase beyond existing authority since any waivers granted would be allocated from the existing waiver "pool."

SECTION 193. TRANSFER OF AUTHORITY UNDER GSP TO THE UNITED STATES TRADE REPRESENTATIVE

Present law

Title V of the Trade Act of 1974, as amended, authorizes the President to designate beneficiary developing countries and eligible articles to receive duty-free treatment under the Generalized System of Preferences. All other authorities, determinations, and functions under the GSP program, including the withdrawal, suspension, or limitation of benefits, also reside with the President.

Explanation of provision

Section 193 of the bill transfers all authorities, determinations, and other functions under the GSP program from the President to the U.S. Trade Representative.

Reasons for change

The transfer of authority from the President to the USTR for the GSP program is consistent with the strengthening of the USTR through transfers of authority in this Act with respect to other trade statutes. The functions under the U.S. program are largely administrative, with the President performing mainly a ministerial role in acting on recommendations from the USTR devleoped through the interagency trade organization.

SECTION 194. APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN OF UNITED STATES INTERNATIONAL TRADE COMMISSION

Present law

Commissioners of the U.S. International Trade Commission are appointed by the President for 9-year terms with the "advice and consent" of the Senate. The chairman and vice chairman of the Commission are designated by the President from among the commissioners for 2-year periods. The President may not designate as chairman either of the two most recently appointed commissioners or one who is a member of the same political party as the prior chairman. The chairman and vice chairman may not be of the same political party.

Explanation of provision

Section 194 amends section 330 of the Tariff Act of 1930 to require that the President's appointment of the chairman and vice chairman of the Commission be made with the advice and consent of the Senate, and removes the restriction on appointing the two most recently appointed commissioners. The amendment would be effective with respect to any appointments made after March 31, 1986.

Reasons for change

This provision was motivated by a concern by a number of members of the Committee that certain commissioners at the ITC have been straying from prescribed legal standards in their interpretation of the laws that they are charged with administering. This provision would allow the President more flexibility in his appointment of a chairman by removing the prohibition against selecting the two most recently appointed commissioners but it would also introduce some degree of accountability for his selections.

SECTION 195. SCOFFLAW PENALTIES FOR MULTIPLE CUSTOMS LAW OFFENDERS

Present law

Under current law, the penalties applicable to persons who violate our customs laws in importing merchandise are determined without regard to whether the party has previously been found in violation of such laws.

Explanation of provision

Section 195 directs the Secretary of the Treasury to issue an order prohibiting any person, who over a 7-year period has either been convicted of, or assessed a civil penalty for, 3 separate violations of one or more customs laws finally determined to involve gross negligence, fraud or criminal culpability, from importing or engaging others to import any goods or services into the United States. The prohibition on importing would remain in effect for such multiple customs law offender for a 3-year period beginning on the 60th day after the date on which the order is issued. Anyone who violates or knowingly aids or abets the violation of such an exclusion order would be subject to a fine of not more than $250,000 or imprisonment for not more than 10 years or both.

For the purposes of this section, the term "customs law" refers to any Federal law providing a criminal or civil penalty for an act, or failure to act in importing goods into the United States. Among the statutes considered to be customs laws are sections 496 and 1001 (but only with respect to customs matters) and any section of chapter 27 of title 10 of the United States Code as well as section 592 of the Tariff Act of 1930.

Orders issued under this provision with respect to multiple customs law offenders which are firms, corporations or other legal entities, apply to all officers and principals of the entity as well as to any employee or agent of the entity who was directly involved in the violation concerned. The Secretary is further directed to prescribe rules for carrying out this section, including a list of applicable customs laws. Other Federal agencies are directed to notify the Secretary of all final convictions and assessments made concerning the enforcement of customs laws.

Reasons for change

The Committee is greatly disturbed at the apparent increasing efforts being made to circumvent our customs laws in the importation of merchandise. Since our customs laws do not provide for increased penalties for repeated violations of such laws, there appear to be many repeat offenders. The purpose of this section is to create a strong disincentive for persons to attempt to violate our customs laws and to deal severely with those who do.

SECTION 196. METALLURGICAL COAL EXPORTS TO JAPAN

Present law

No provisions.

Explanation of provision

Section 194 adds a new provision expressing the sense of the Congress that the objectives of the November 1983 Joint Policy Statement on Energy Cooperation as it relates to U.S. exports of metallurgical coal to Japan have not been achieved. It urges the President to direct the U.S. Trade Representative to negotiate an agreement with Japan under which Japan will import U.S. metallurgical coal in quantities equivalent to that used in the production of Japanese steel products exported to the United States. The President also is urged to report to the Congress on the success or failure of any negotiations by November 1, 1987.

Reasons for change

The Joint Policy Statement on Energy Cooperation, issued by President Reagan and Prime Minister Nakasone on November 11, 1983, dealt with various aspects of U.S.-Japan energy trade and cooperation. With respect to metallurgical coal, the Joint Statement noted:

> that the depressed state of world steel manufacturing had reduced demand for traded coal. However, in view of the fact that the U.S. has been a major supplier to the Japanese market, both sides will endeavor to maintain the level of Japanese imports of U.S. coal. Japan expects that imports of competitively priced U.S. metallurgical coal will not continue to decline, and will encourage its steel industry to increase U.S. coal imports when the conditions in the industry permit.

Japan is the largest single steel exporter to the United States (not counting the European Community as a bloc), accounting for

25 percent of U.S. steel imports in 1985. U.S. imports of Japanese iron and steel products in 1985 totalled $3.3 billion, up nearly 60 percent over 1983 imports of $2.1 billion. In 1983, when the Joint Statement was issued, the United States accounted for 25 percent of Japan's imports of metallurgical coal, according to Japanese customs data. By 1985, however, the U.S. share had declined to 18 percent, reflecting a decline in U.S coal exports in both volume and value terms. This decline occurred despite overall increases in Japanese production and exports of steel and in Japan's overall imports of metallurgical coal. While contract prices of U.S. metallurgical coal were on average $5 to $7 per ton above world spot prices during much of 1983 and 1984, by 1985 that price differential was virtually eliminated. Despite that narrowing of price differentials, Japanese purchases of U.S. metallurgical coal have continued to fall and are expected to continue falling in 1986. In adopting the language in section 174, the Committee is expressing its desire to see the President address the decline in U.S. metallurgical coal exports to Japan through negotiations which will give added meaning and strength to the objectives of the 1983 Joint Policy Statement.

SECTION 197. STEEL IMPORTS

Present law

Under the Steel Import Stabilization Act (title VIII of the Trade and Tariff Act of 1984), the President is authorized to enforce quantitative restrictions on steel imports, as provided in bilateral arrangements with steel-exporting countries. At the present time, the United States has bilateral arrangements with 17 countries plus the European Community. These agreements generally provide for the enforcement of quantitative restrictions by means of export visas issued by the foreign government.

Explanation of provision

Section 197 adds a new subsection to section 805 of the Steel Import Stabilization Act, to provide explicit authority to enforce quantitative restrictions on steel imports when the steel product is exported from an arrangement country and transshipped or transformed in a nonarrangement country before entering the United States. The new provision states that any steel product that is manufactured in a country that is not party to a bilateral arrangement (a "nonarrangement country") from steel which was melted and poured in a country that is party to a bilateral arrangement (an "arrangement country"), will be treated for purposes of the quantitative restrictions under that arrangement as if it were a product of the arrangement country.

Thus, if a steel product, such as steel pipe, is imported from a country with which the United States has no steel restraint agreement ("country X"), and this steel pipe was manufactured in country X from steel sheet that was melted and poured in country A (a country with which the United States does have a steel restraint agreement), then the steel pipe from country X will be treated (for purposes of quota and export license/visa/certificate restrictions only) as if it were steel pipe from country A. Therefore, if the bilateral arrangement between the United States and country A sets a quantitative restriction on country A's steel pipe exports, and requires such exports to be accompanied by a valid export license, visa, or certificate, then the U.S. Customs Service shall require the steel pipe from country X to meet such requirements.

Paragraph 2 of the new subsection, however, further provides that the steel pipe from country X may be treated as steel sheet from country A, if valid documentation is provided to U.S. Customs regarding the nature and amount of the steel sheet which is embodied in the steel pipe.

Reasons for change

Since the enactment of the Steel Import Stabilization Act and implementation of the President's steel program of negotiated restraint agreements, numerous concerns have been brought to the attention of the Congress regarding transshipment and circumvention schemes through third country markets. Section 197 of this bill clarifies the intent of the Committee, when it passed the Steel Import Stabilization Act, that adequate and full enforcement of the President's program of negotiated restraints is necessary to eliminate the adverse effects of unfair trade in steel imports. It is the view of the Committee that circumvention of quantitative restrictions negotiated in bilateral restraint agreements impairs the effectiveness of the President's program, and therefore should be dealt with in a forthright manner as provided in this section.

SECTION 198. IMPORT MONITORING BY THE INTERNATIONAL TRADE COMMISSION, TECHNICAL AMENDMENTS

Import Monitoring

Present law

No provision.

Explanation of provision

Section 198(a) directs the U.S. International Trade Commission to being, upon the date of enactment, to monitor imports into the United States in order to indentify, rank and analyze product sectors for which imports are likely to pose potential significant trade impact problems for U.S. industries. The Commission is directed to take into account such factors as changing net trade balances and evidence of increasing domestic market penetration with respect to such product sectors and to submit a quarterly report containing such analysis to the Committee on Ways and Means and the Committee on Finance.

Reason for change

The purpose of this provision is to provide the Committee with an early warning system with regard to domestic industries for which import competition is increasing. It is expected that, based on information contained in the quarterly monitoring report and consultations between the Committee and the Commission, requests may be made for a more thorough assessment, under section 332 of the Tariff Act of 1930, for certain industries that are identified as experiencing significant import penetration.

Confidential Information

Present law

Section 332(g) currently requires that the Commission "put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command." Present law, thus, permits the President and Congress to require the Commission to transmit to the President and House Committee on Ways and Means, and/or Senate Committee on Finance information received in confidence and exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

Explanation of provision

Section 198(b) amends section 332(g) to prohibit the Commission from releasing information which it considers to be confidential business information, unless the party submitting the confidential business information had notice, at the time of submission of the information that such information would be released by the Commission or the submitting party has subsequently consented to release of the information.

Reasons for change

The purpose of this technical amendment is to enable the Commission to provide adequate assurances to submitters of confidential business information as to the use to be made of such information. Under amended section 332(g), the Commission would not be required to release confidential information in its possession to the persons requesting such information under section 332(g) unless the parties submitting the information had notice, at the time they submitted the information, that the information would be released or the submitting party subsequently consented to release. The Committee recognizes that the Commission, in conducting its investigation under various statutory provisions, depends largely on voluntary responses to requests for information to members of industry and other interested persons in the course of its investigations. The Committee believes that it is important that the Commission be able to provide submitting parties with adequate assurances as to the use to be made of such information.

Paperwork Reduction

Present law

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501) requires that all Federal agencies collecting information from 10 or more members of the public submit their questionnaires to OMB for approval prior to seeking the information. In the event OMB disapproves the issuance of a questionnaire, the Act authorizes independent regulatory agencies to override OMB disapproval by majority vote. The Act defines the term "independent regulatory agency" to include certain enumerated agencies "and any other similar agency designated by statute as a Federal independent regulatory agency or commission." The Commission is not one of the enumerated agencies and it is unclear whether the Commission is an "independent regulatory agency or commission."

The agencies named as an "independent regulatory agency" in the statute are the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Products Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, and the Securities and Exchange Commission (44 U.S.C. 3502(10)).

Explanation of provision

Section 198(c) amends section 330 of the Tariff Act of 1930 to designate the Commission as an "independent regulatory agency" for purposes of the Paperwork Reduction Act.

Reasons for change

This amendment is intended to allow the Commission to be treated like other independent agencies in allowing the Commission the opportunity to override OMB disapproval of questionnaires by a majority vote under appropriate circumstances.

TITLE II—MISCELLANEOUS TARIFF AND CUSTOMS PROVISIONS

Subtitle A—Reference to Tariff Schedules

SECTION 201. REFERENCE

Section 201 applies to all other sections of Title II. It states that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, item, headnote or other provision, the reference shall be considered to be made to a schedule, item, headnote, or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

Subtitle B—Permanent Changes in Tariff Treatment

SECTION 211. IMPORTATION OF FURSKINS

(Originally introduced as H.R. 3019 by Mr. Gibbons)

Section 211 would end the prohibition on imports into the United States of ermine, fox, kolinsky, marten, muskrat, and weasel furskins which are the product of the Union of Soviet Socialist Republics (USSR). This would be accomplished by deleting headnote 4 to subpart B, part 5 of schedule 1 of the Tariff Schedules of the United States (TUSUS). The import ban has been in effect since January 5, 1952, with respect to products of the USSR.

Following is a brief description of each of the skins covered by this legislation:

Ermine—these furskins are derived from small weasel-like animals found most commonly in the USSR. These furskins are used chiefly in the manufacture of expensive jackets and coats.

Fox—these skins come from silver, black, and platinum foxes (grown on ranches) or red and grey foxes (from wild catch).

Kolinsky—these skins come from kolinskies which are animals closely resembling minks. They are found in and near Siberia and Manchuria and their pelts are used more for trimming than for coats and jackets.

Marten—these skins come from animals closely resembling sables. Marten are found in the U.S. and Canada, and certain closely related animals are found in the USSR and China.

Mink—these furskins are obtained from both captivity and the wild. In the dressing process the skin is tanned and the fur is cleaned and brushed. Mink furskins are used almost exclusively in the manufacture of fur coats, fur jackets, fur stoles and wraps, and as fur trim on cloth or leather jackets.

Muskrat—these skins are obtained from animals resembling beaver although smaller and lacking wide, flat tails. These skins are less expensive than the above skins and are used in the production of coats and jackets.

Weasel—these animals are found throughout the world. Their skins are commonly used for fur trim.

The Administration seeks passage of this legislation as described in a letter from Malcolm Baldrige to George Bush to . . "further the President's policy of seeking a more constructive working relationship with the Soviet Union, and to reciprocate a commitment by Soviet Foreign Trade Minister Patolichev to improve the market access for business firms in the Soviet Union."

The column 1 rates of duty for the furskins covered by this legislation vary from free (raw or not dressed skins except fox) to 9.3 percent ad valorem (silver, black, or platinum fox whether or not dressed). The column 2 rates are free for raw or undressed skins to 50 percent for the above mentioned fox furskins. These articles are eligible for GSP (except raw or not dressed skins) and CBERA.

Only limited data are available concerning domestic production of furskins of the type involved in this legislation. Data on the number of mink pelts produced on U.S. mink farms and the value of such production, as collected by the U.S. Department of Agriculture, indicates that pelt production increased from 3.5 million pelts valued at $123.6 million in 1980 to 4.2 million pelts valued at $119.0 million in 1984.

Data on the wild catch during the 1979–80 season as collected by the American Fur Resources Foundation, indicates that in 1980 (the latest year data is available) the predominant catch was muskrat (9.2 million valued at $79.5 million), fox (790,000 animals valued at $39.0 million) and mink (430,000 animals valued at $9.6 million).

Two domestic industries exist, one producing furskins and one dressing furskins and manufacturing garments.

Furskins are derived from animals (in this country usually mink and, to a lesser extent, foxes) either raised in captivity or fur farms or ranches or obtained from the wild catch of trappers and hunters. In 1984, there were 1,069 mink farms in the United States.

Foxes were raised on 14 percent of these farms in 1984. The leading mink producing state was Wisconsin with 241 farms in 1984 followed by Utah and Minnesota.

In 1984, there were approximately 1,390 fox farmers in the United States. The leading fox-producing state was Wisconsin, with 185 farms in 1984; other leading fox-producing states include Pennsylvania, Minnesota, and Utah.

Officials of the National Board of Fur Farmers, an industry trade association, indicate that almost all fur farms are small-scale, family-owned businesses and that no individual or small group accounts for a significant share of the industry's sales.

An estimated one to two million individuals trap and hunt for furskins in the United States. Only a small portion derive a significant income from such activities, and no one individual or firm accounts for a significant part of the trapping industry. The estimated income derived from all wild furskins has totaled $350 million to $500 million annually in recent years. Most trappers, hunters and dressers handle furskins of a variety of species of animals.

The number of U.S. furskin dressers has been in a long-term decline. According to industry sources the number of U.S. furskin dressers is between 15 to 20 companies, concentrated in the New York City area, and the number of fur garment manufacturing companies is approximately 350.

Complete data concerning U.S. imports of the subject furskins are not available. Furskins of four of the species covered by the import ban (ermine, kolinsky, muskrat, and weasel) are not separately provided for, but instead are classified with other species not covered by the headnote under several residual or "basket" tariff items.

Data is available on three of the skins that are separately provided for in the TSUS (fox, marten, and mink). Imports of mink increased from $85.2 million in 1980 to $102.6 million in 1984. Fox increased from $19.8 million to $37.9 million over the same period and the increase of marten imports was $0.9 million to $1.8 million.

The leading suppliers to the United States of mink, fox, and marten furskins in 1984 were Finland, Denmark, Canada, and Sweden. U.S. imports of furskins of the types enumerated in the headnote from countries receiving the column 2 rate of duty amounted to about $0.5 million in 1984, or less than 1 percent of total imports of the subject furskins.

Data concerning U.S. exports of the subject furskins are reported only for whole fox furskins, not dressed; whole muskrat furskins, not dressed, and whole mink furskins, dressed or not dressed. The value of exports of these skins dropped from $232.8 million in 1980 to $143.2 million in 1984.

The value of U.S. exports of furskins classified in the residual tariff items (including an unknown quantity of exports of furskins of the type covered by the import restrictions) and of furskins classified on the basis of their forms, (plates, mats, and so forth) decreased from $208.5 million in 1980 to $125.6 million in 1984.

Data on U.S. consumption is not available.

To the extent that ending the prohibition of U.S. imports of the enumerated furskins from the USSR would result in an increase in total U.S. imports of such furskins, there would be a gain in customs revenues. However, since U.S. imports of these furskins have been prohibited since 1952, any projection of the quantity of imports that may result from ending the prohibition is highly speculative. Such furskins would be dutiable at column 2 rates of duty. Since articles classified in TSUS item 124.10 are free of duty, ending the prohibition on imports from the USSR of articles classifiable in that tariff item would have no effect on customs revenues.

SECTION 212. SALTED AND DRIED PLUMS

(Originally introduced as H.R. 2278 by Mr. Heftel)

Section 212 creates a new tariff classification for plums, soaked in brine and dried with a column 1 and column 2 rate of 2 cents per pound. These plums are currently classified with other prepared or preserved plums, prunes and prunelles with a column 1 rate of 17.4 percent ad valorem and a column 2 rate of 35 percent ad valorem.

Plums are the fruit of a perennial, flowering tree grown in temperate climates throughout the world; in the United States, more than 2,000 varieties of plums, consisting of about a dozen species, have been grown. Most of the important varieties grown commercially are of 2 species; European plums, best suited for drying, and Japanese plums, marketed chiefly as fresh fruit.

Canned plums are generally used a an appetizer, a side dish or a dessert fruit, while frozen plums are used in the manufacture of preserves and baked goods. Plums and prunes in brine are primarily oriental specialty foods.

According to the sponsor, the proposal is intended to grant a lower duty rate to plums which are first heavily salted by soaking in brine, then dried, and which have a limited market as an oriental delicacy. Because they were first salted, these plums are not classified as "dried" by the Customs Service; however, the sponsor argues that the rate of duty on dried plums is appropriately applied to this product because it is in essence dried, rather than canned or frozen. He also cites the lack of domestic production of this specialty fruit.

Imported prepared or preserved plums, prunes and prunelles (including plums soaked in brine and then dried) are currently classified in TSUS item 149.28 with a column 1 rate of duty of 17.5 percent ad valorem and a column 2 rate of 35 percent ad valorem. Imported plums are not eligible for GSP but are eligible for CBERA.

According to industry sources, there is no known domestic production of plums that are soaked in brine and dried. Total U.S. production of prepared or preserved (that is, canned and frozen) plums and prunes declined irregularly from an estimated 53.7 million pounds in 1980 to 38.2 million pounds in 1984.

Plums and prunes are produced commercially in nearly every state, with 91 percent of the crop harvested in California in recent years. According to the *Census of Agriculture,* plums and prunes were produced on 140,000 acres on 11,200 farms in 1982, compared with 136,000 acres on 13,100 farms in 1978. In 1982, 3,700 farms in California accounted for 122,400 acres of production. Most of the producers raise other crops in addition to plums.

During 1980-84, total U.S. imports of otherwise prepared or preserved plums rose irregularly from 1.8 million pounds, valued at $2.5 million, in 1980 to 2.5 million pounds, valued at $3.2 million, in 1984. Data are not separately reported for the plums covered by the proposed legislation; however, such imports are believed to be very small. Hong Kong was the leading source of imported prepared or preserved plums in 1984; Taiwan and China were also sources of supply.

U.S. exports of prepared or preserved plums are not separately reported; however, such exports in recent years are believed to be negligible or nil.

During 1980-1984, apparent U.S. consumption of prepared or preserved plums declined irregularly, averaging 41.8 million pounds annually; in 1984, consumption amounted to 40.7 million pounds. The ratio of imports to consumption averaged 5 percent annually throughout the period.

Enactment of this legislation would likely have little effect on revenue as imports of plums soaked in brine and then dried are believed to have been minimal.

SECTION 213. GRAPEFRUIT

(Originally introduced as H.R. 2362 by Mr. MacKay)

Section 213 would add two new items to the TSUS to provide tariff treatment for imports of grapefruit juice comparable to that provided for orange juice in legislation that become effective January 1, 1985.

Currently, not concentrated grapefruit juice is dutiable at a column 1 duty rate of 20 cents per gallon, and concentrated grapefruit juice is dutiable at a column 1 rate of 35 cents per gallon. The rate for not concentrated juice applies to both natural (fresh) juice and to juice produced from concentrated juice (reconstituted). The effect of this legislation would be to make the rate of duty applicable to not concentrated grapefruit juice (20 cents per gallon) apply only to *natural* unconcentrated grapefruit juice and *not* to *reconstituted* grapefruit juice. Currently, foreign grapefruit juice concentrate can be exported to a third country, reconstituted, and then entered into the United States as a not concentrated citrus juice at the lower rate of duty.

The grapefruit juice covered by this bill may not be mixed with other fruit juices, but may be sweetened or unsweetened, not concentrated (single-strength) or concentrated, and may not contain over 1 percent of ethyl alcohol by volume. If concentrated, the juice may be in liquid, powdered, or solid form.

The purpose of this bill is to close a perceived loophole in the TSUS that could allow highly concentrated grapefruit juice to be brought into foreign trade zones for processing and then entry into U.S. customs territory at a duty rate of 20 cents per gallon, rather than the 35 cents that is applicable to imported concentrates. The sale of this reconstituted product entered at the lower rate of duty would have a severe price depressing effect on U.S. production. A similar "loophole" has already been closed for orange juice, but unless it is also closed with respect to grapefruit juice, there may be a shift in production to the latter product.

Grapefruit juice which is not mixed, not concentrated, and does not contain over 1.0 percent of ethyl alcohol by volume, is classified for tariff purposes under TSUS item 165.32. The column 1 rate of duty is 20 cents per gallon (10.4 percent ad volorem equivalent in 1984), and the column 2 rate is 70 cents per gallon. Included under this item are juices which are reconstituted from concentrate.

Grapefruit juice which is concentrated is classified under TSUS item 165.36. The column 1 rate of duty applicable to this item is 35 cents per gallon (27.7 percent ad valorem equivalent in 1984) and the column 2 rate is 70 cents per gallon.

Items 165.32 and 165.36 are not eligible for duty-free treatment under the GSP and no LDDC rate applies. Imports are eligible for CBERA.

Under the recently negotiated free-trade agreement with Israel items 165.32 and 165.36 were designated senstive articles and excluded from the benefits of duty-free treatment for a period of 5 years.

U.S. processing firms that produce grapefruit juice generally also process orange juice, but in significantly larger quantitites than the production of grapefruit juice. Nationally, an estimated 40 firms process grapefruit juice from fresh fruit and nearly seven-eighths of them are located in Florida.

U.S. production of grapefruit juice (on a single-strength equivalent basis) averaged 170 million gallons annually during 1980–82, and declined to an annual average of 110 million gallons during 1983–84. Florida supplied about 80 percent of the domestic production over the 5-year period. While much of Florida's production of concentrated grapefruit juice is later reconstituted to produce single-strength juice before sale to the ultimate consumer, the share of Florida's total production that is initially concentrated increased from 54 percent in 1980 to 79 percent in 1984. Thus, the quantity of single-strength grapefruit juice produced directly from fresh grapefruit in Florida has declined dramatically from 66 million gallons in 1980 to 20 million gallons in 1984.

Separate statistics for U.S. imports of grapefruit juice are not available. U.S. imports of not concentrated grapefruit juice are estimated to have been less than 1 million gallons annually during 1980–84. In 1984, when not concentrated orange juice was excluded from the basket class for the first time, U.S. imports of other not concentrated citrus fruit juices (predominately grapefruit juice) totaled 1.1 million gallons and 84 percent of the imports were from Canada.

In 1984 U.S. imports of other concentrated citrus fruit juices (predominately grapefruit juice) totaled 3 million single-strength equivalent gallons, valued at $3.5 million. The primary suppliers in 1984 were Brazil (39 percent), Belize (34 percent), and Mexico (19 percent). The imports from Belize in 1984 entered free of duty under the CBI. No imports were from that souce during 1980–83.

During 1980–84 U.S. exports of grapefruit juice, both not concentrated and concentrated (measured on a single-strength basis), were equivalant to 12 percent of domestic production. Exports declined irregularly from 18.3 million gallons in 1980 to 15.5 million gallons in 1984, which is a smaller percentage decline (15 percent) than the decline in production (39 percent). Japan, Canada, and West Germany were the principal export markets for grapefruit juice in 1984.

During 1980–84, the apparent U.S. consumption of grapefruit juice declined irregularly from 163 million gallons in 1980 to 97 million gallons in 1984. The ratio of imports of "other citrus juice" to consumption of grapefruit juice did not exceed 6 percent during 1980–84, and was generally in the range of 1 percent to 3 percent.

The potential annual gain in customs revenues resulting from enactment of this legislation would be about $165,000, based on dutiable imports in 1984. This estimate is based on the assumptions that all imported not concentrated other citrus fruit juice in 1984 was made from reconstituted grapefruit juice concentrates, and that all imported concentrated citrus fruit juice other than lime or orange entered in 1984 was concentrated grapefruit juice.

SECTION 214. CARROTED FURSKINS

(Originally introduced as H.R. 2273)

The proposed legislation would provide permanent duty-free treatment for hatters' fur now classified in TSUS item 186.20 while removing carroted furskins from the scope of that item. A new item 186.22 would be added to cover carroted furskins which would be dutiable at a column 1 rate of 15% ad valorem and a column 2 rate of 35% ad valorem. Section 214 would be made effective for items entered after December 31, 1985.

Hatters' fur is the principal raw material used in the production of fur felt hats. Hatters' fur is cut from the skins of certain animals (chiefly rabbits and hares) after the skins have undergone carroting, a chemical process to improve the felting properties of the fur. Most of the hatters' fur produced in the United States is cut from raw skins which are imported free of duty and then carroted in the United States before the removal of the fur for use as hatters' fur.

According to the sponsor, these changes would correct an anomaly in the tariff rates of duty whereby imported finished products (fur felt hats) and semifinished products (hat bodies, known in the trade as hoods) are dutiable at a lower rate than the raw material (hatters' fur) used to make the finished and semifinished product.

Imports of hatters' fur under TSUS item 186.20 are dutiable at a column 1 rate of 15 percent ad valorem and a column 2 rate of 35 percent ad valorem. The column 1 rate is suspended through December 31, 1985. Imports are eligible for duty free entry under GSP and CBERA.

Imports of the raw material from which almost all hatters' fur is made (raw or not dressed rabbit furskins) are free of duty from both column 1 and column 2 countries.

The bulk of the imports of the finished products (fur felt hats) and semifinished products (hoods) which are made from hatters' fur are dutiable at a column 1 rate of $1.51 per dozen plus 2.2 percent ad valorem, and a column 2 rate of $16 per dozen plus 25 percent ad valorem. The ad valorem equivalent was 5 percent for column 1 imports in 1984.

Detailed statistics concerning U.S. production of hatters' fur are not available. Industry sources estimate that U.S. production amounts to less than one million pounds annually. Production, which began declining after World War II, dropped steeply in the 1960's. In recent years, however, the industry has revived somewhat with the increased demand for Western-style hats. industry sources indicate that the domestic industry has considerable unused and underutilized capacity.

The hatters' fur and fur felt hat industries are characterized by high degrees of concentration and integration. Five firms are believed to account for nearly all of the domestically produced hoods and fur felt hats. These firms, however, have subsidiaries and plants located throughout the United States, with much of the hatters' fur reported to be produced around Newark, New Jersey. Excluding Stratton Hats, Inc., which imports hatters' fur for production of hoods and hats, these firms are believed to account for the great bulk of U.S. production of hatters' fur. Although the firms occasionally sell hatters' fur or hat bodies to each other, most of the production of hatters' fur and hoods is captive production for producing their own fur felt hats.

The five firms together account for almost all U.S. imports of hatters' fur, and for some U.S. imports of fur felt hats.

During 1980–84, U.S. imports of hatters' fur generally declined, ranging from a high of 195,000 pounds, valued at $2.6 million, in 1981 to 26,000 pounds, valued at $226,000, in 1984. France was the principal source for U.S. imports during 1980–84, supplying 62 percent of the quantity and 69 percent of the value of imports in 1984. The remainder of U.S. imports of hatters fur in 1984 was supplied by Belgium and the Federal Republic of Germany. Imports from column 2 sources were nil in 1984.

Based on import statistics and industry estimates of production, apparent U.S. consumption of hatters' fur amounted to about one million pounds annually in recent years.

Based on imports in 1984, it is estimated that the annual loss of customs revenue resulting from enactment of the legislation would approximate $34,000.

SECTION 215. TARIFF TREATMENT OF CERTAIN TYPES OF PLYWOOD

(Originally introduced as H.R. 2324 by Mr. Bonker)

Section 215 would revise headnote 1 to part 3 schedule 2 of the Tariff Schedules of the United States (TSUS) to ensure that imports of tongued, grooved, lapped, or otherwise edge-worked plywood, wood-veneer panels, and cellular panels would be classified under the tariff provisions for those products rather than as building boards.

The products included in this legislation, plywood, wood-veneer panels, cellular panels, and building boards, are described in the headnotes to part 3 of schedule 2 of the TSUS. Whether or not they have been edge worked, these products are used for many purposes, including siding, flooring, wall paneling, and roofing. Cellular panels are generally not edge worked.

Plywood sheets are being exported by Canada to the United States as building boards rather than as plywood. This subjects them to a much lower duty rate. By simply altering the edge of a plywood sheet, the merchandise qualifies for classification as building boards under the theory that the edgework dedicates the sheet to some special use. Actually the sheets are used no differently than are plywood sheets with plain edges. This legislation would revise the tariff schedules to insure that only special-use plywood is classified under the building board category.

Currently, Customs classifies plywood and wood veneer panels which have been edgeworked as building boards with an ad valorem equivalent of 10 percent and a column 2 rate of 15 cents per pound plus 25 percent ad valorem. Imports are eligible for GSP and CBERA.

A 516 petition was filed contesting the classification of edgeworked plywood as building boards. Customs affirmed their classification and the petitioner filed a summons in the Court of International Trade.

Domestic production of plywood, wood-veneer panels, cellular panels, and building boards amounted to about 20.4 billion square feet, valued at about $4.0 billion in 1982. In 1984 production rose to about 30.3 billion square feet, valued at about $5.45 billion.

It is estimated that in 1984 about 400 companies, employing 68,500 people, produced plywood, wood-veneer panels, cellular panels, and building boards. Of these companies, approximately 18 (41 plants), employing 2,000 people, produced softwood plywood siding, which is the major product which would be affected by enactment of the legislation.

U.S. imports of plywood, wood-veneer panels, cellular panels, and building boards are estimated to have fallen from $620 million in 1979 to $400 million in 1982 as construction activities fell. Imports then rose to $580 million in 1983 and $700 million in 1984 as such activities rebounded.

U.S. exports of plywood, wood-veneer panels, cellular panels, and building boards are estimated to have risen from $115 million in 1979 to $300 million in 1984 as U.S. producers continued to seek new markets. Exports of edge-worked panels are estimated to have totaled about $55 million in 1984.

In 1984 approximately 30 billion square feet, valued at about $5.4 billion, was consumed in the United States. The increase reflects a rebound in construction activities. U.S. imports of plywood, wood-veneer panels, cellular panels, and building boards, amounted to about 1 percent of total U.S. consumption of such products in 1984.

It is estimated that in 1984, 1.6 billion square feet, or about 5 percent of total U.S. consumption of plywood, wood-veneer panels, cellular panels, and building boards, was edge worked.

None, as it is expected the increased duty would be absorbed by exporters and/or importers because the Canadians are so competitive with the U.S. The effect of the legislation would be roughly a doubling of duty from $400,000 to $800,000.

SECTION 216. BROADWOVEN FABRICS OF MAN-MADE FIBERS

(Originally introduced as H.R. 2338 by Mr. Jenkins)

The proposed legislation would create three new items in the Tariff Schedules of the United States (TSUS) to cover woven fabrics of man-made fibers, other than those containing over 17 percent of wool by weight and those in chief value of glass. These three items would replace current TSUS item 338.50, to allow the creation of additional statistical annotations for such fabrics. Under the single five-digit provision currently applicable to such fabrics, 99 statistical annotations (using combinations of two digits from 01 to 99) are possible. With three tariff items, a total of 297 statistical annotations would be possible.

Man-made fiber broadwoven fabrics are produced in weaving mills and are often the only product manufactured by an individual mill. Approximately 40 percent of the fabrics are sold to apparel plants, with most of the balance used for home furnishings and industrial products.

Officials of the American Textile Manufacturers Institute, Inc. (ATMI) state that the purpose of the bill is to establish more legal provisions for these products so that additional statistical annotations, by type of fabric, could be made available to assist the domestic industry in measuring import competition. ATMI also states that the secondary purpose of the bill is to provide additional or transition data to facilitate the possible conversion from the TSUS to the Harmonized System in 1987.

The current column 1 rate of duty for TSUS item 338.50 is 4 cents per pound plus 18.8 percent ad valorem, or an equivalent ad valorem rate of approximately 19 percent based on imports in 1984. The column 2 duty rate is 81 percent ad valorem, and no preferential LDDC rate is granted. Imports are not eligible for GSP or CBERA and may be subject to quantitative restraints under the MFA.

The quantity of broadwoven fabrics of man-made fibers produced domestically decreased from 12.6 billion square yards in 1980 to 11.85 billion in 1984.

The 1982 Census of Manufactures published by the Bureau of Census indicates that there were 340 firms operating 522 establishments weaving the subject broadwoven fabrics of man-made fibers (Standard Industrial Code 2221). According to the Census, these establishments employed 141,000 workers in 1982. The Bureau of Economic Analysis of the Bureau of Census estimates that his industry employed 134,000 workers in 1984.

Imports increased from 290 million square yards in 1980 to 659 million in 1984. The leading suppliers in 1984 were Japan (38%), Italy (23%), and Korea (20%).

U.S. exports decreased from 576 million square yards in 1980 to 207 million in 1984.

Consumption remained fairly constant during 1980–1984 averaging 12.3 billion square yards per year.

This provision would have no effect on revenue.

SECTION 217. URANIUM HEXAFLUORIDE (UF6)

(Originally introduced as H.R. 2336 by Mr. Guarini)

Section 217 would amend the Tariff Schedules of the United States (TSUS) by adding new tariff provisions in order to impose a duty of $3 per pound on both column 1 and column 2 imports of uranium hexafluoride (UF6) that is imported for use in reactors in the United States from any country requiring uranium mined in that country be converted or upgraded into UF6 before export.

The bill also provides that this new tariff provision would be eliminated by Presidential proclamation when the President finds that no foreign country requires the conversion or upgrading of uranium mined in that country into uranium hexafluoride before export from the country.

Almost all of the commercial value of uranium is accounted for by its use in the production of nuclear fuel for use in the generation of electricity by nuclear power plants. Most developed nations, including the United States, use light water reactors for the production of uranium fuel for use in nuclear power plants. In this process, uranium ore is converted to the oxide uranium yellowcake (U308), which is then converted to the chemical intermediate, uranium hexafluoride (UF6).

The uranium hexafluoride goes through several processes until fuel pellets of uranium dioxide (UO2) are produced.

Canada's nuclear power industry uses heavy water reactors, which permit the use of natural uranium as the fuel element. This dispenses with the need to produce either enriched uranium or its precursor, uranium hexafluoride.

The proposed legislation was introduced on behalf of two domestic firms, each of which operates a plant for the conversion of uranium yellowcake to uranium hexafluoride. These firms have become increasingly concerned about a long-standing Canadian Government ministerial requirement that all uranium mined in Canada must be upgraded into uranium hexafluoride before export.

Although Canada's uranium upgrading policy had been in effect since 1958 (reaffirmed in 1974), it was not a source of significant concern to the domestic conversion industry before 1983 because of the limited capacity of the Canadian converter, and because exports of uranium from Canada to the United States for domestic use were relatively small. Since 1983, however, Canada's upgrading policy has become a major source of concern to the domestic conversion industry because of several factors, including the tripling of Canada's conversion capacity, reduced U.S. production of relatively low-grade uranium ore replaced in part by increased imports of high-grade uranium from Canada, and the phasing out of U.S. Government restrictions on enrichment of foreign-origin uranium.

Despite negotiations between the Canadian Government and the U.S. State Department and despite repeated appeals by members of Congress to the Canadian Government, the Government of Canada has not rescinded its uranium upgrading policy.

Uranium hexafluoride enters the U.S. duty free. It is not eligible for GSP but is eligible for CBERA. Uranium compounds of other types are also duty free.

Domestic production of uranium hexafluoride decreased from 21.2 thousand short tons (TST) in 1980 to 15.3 TST in 1984. Industry sources estimate that production and operating capacity rates will continue to decline. U.S. production of uranium hexafluoride declined less sharply than domestic production of uranium yellowcake (which declined by around 66 percent) during 1980-84, because the domestic conversion industry was able to take advantage of many long-term contracts with U.S. utilities that were negotiated during a period of tight uranium demand. The domestic conversion industry was also less adversely affected by imports than the uranium mining and milling industry because much of the uranium imported during 1982-84 was in the form of uranium yellowcake, and was converted into uranium hexafluoride in the United States.

Representatives of the domestic conversion industry feel that the Government of Canada's uranium upgrading policy is beginning to have some effect in reducing uranium hexafluoride production levels. These sources believe, however, that the full effect of Canada's uranium upgrading policy will not be felt until 1990 and thereafter, when major uranium conversion contracts with U.S. utilities expire.

There are two domestic facilities for the conversion of yellowcake into uranium hexafluoride. Allied Corporation, headquartered in Morristown, New Jersey, operates a plant in Metropolis, Illinois. The other plant, located in Gore, Oklahoma, is operated by Sequoyah Fuels Corporation. The first has a capacity of 16.5 TST and the second has a capacity of 11.8 TST. Because of reduced market demand for uranium, employment at the two uranium hexafluoride facilities declined from 637 in 1980 to 557 in early 1985.

U.S. imports of uranium hexafluoride increased from 16.1 million pounds, valued at $626 million, in 1980 to 18.8 million pounds, valued at $849 million, in 1984. Most of these imports were enriched at Department of Energy (DOE) enrichment facilities in the United States and then reexported.

U.S. imports of uranium hexafluoride from Canada increased during 1980-84 from 4.0 million pounds, valued at $143 million, to 8.5 million pounds, valued at $274 million. U.S. imports of uranium hexafluoride from Canada continued to rise in 1985, increasing from 1.2 million pounds, valued at $44 million, in the first quarter of 1984 to 3.9 million pounds, valued at $101 million, in the first quarter of 1985.

Shipments of uranium hexafluoride produced by the domestic conversion industry to foreign utilities fluctuated between about 1,500 and 3,500 short tons (in units of U308 content) annually during 1980-84. A major portion of these exports went to Japan, West Germany, Taiwan, and South Korea. The estimated foreign market share acquired by the U.S. conversion industry during 1980-84 amounted to 10 percent or more. The ability of U.S. converters to attract foreign utilities during 1980-84 was limited because conversion costs amount to only a small percentage of the total cost of uranium fuel.

U.S. consumption information is not publicly available.

Because of the high level of uranium inventories currently held by U.S. utilities and uranium suppliers, which have depressed market prices for uranium, most industry sources believe that U.S. utilities would not immediately purchase uranium hexafluoride from Canada if a duty rate of $3 per pound were imposed. Eventually, however, because of the difference in production costs between domestically mined uranium and uranium mined in Canada, uranium hexafluoride from Canada could compete again in the U.S. market.

Based on the assumption that uranium hexafluoride from Canada would account for about one-third of the domestic market for uranium hexafluoride in 1991, or about 50 million pounds, customs revenue in that year due to imports of uranium hexafluoride from Canada would amount to about $150 million if the legislation were in effect.

SECTION 218. SILICONE RESINS AND MATERIALS

(Originally introduced as H.R. 2186)

Section 218 would amend the Tariff Schedules of the United States (TSUS) to impose a single rate of duty on silicones in all forms. Specifically, section 1(a)(1)(A) would amend headnote 2 to part 4A of schedule 4 of the TSUS, defining "synthetic plastics materials," to classify together silicone fluids, resins, elastomers, and other silicone products whether or not they are in solid form in the finished articles.

In section 1(a)(2), the legislation would also amend headnote 2 of part 4B of schedule 4 of the TSUS by inserting the following paragraph: "(c) For the purpose of the tariff schedules, the term "rubber" does not include silicones."

Section 1(a)1(B) would insert a new tariff item (item 445.55) covering silicone resins and materials. The column 1 rate of duty would under section 1(b) be subject to staged reductions to 3.9 percent ad valorem in 1986 and 3.7 percent ad valorem in 1987. Section 2 would make the provisions of the legislation effective upon enactment.

Silicone rubber would no longer be classified in TSUS item 446.15 (with a column 1 duty rate of 0.8 percent ad valorem and an LDDC rate of free), which provides for synthetic rubber. Nor would the duty rates proposed for item 445.55 correspond to those for item 445.56, where some of the subject articles are now classified but which would no longer occur after enactment of the new law.

Silicones are a unique family of polymers, containing alternating silicon and oxygen atoms in the polymer chain with various organic substitutes attached to the silicon atoms. Silicone fluids are clear liquids of varying viscosities used as antifoaming agents, release or parting agents, hydraulic or heat-transfer fluids, and permanent water-repelling agents for leather, fabrics, and masonry. Silicone elastomers are essentially high molecular weight fluids that offer good resistance to weathering. They also have been recently used in cosmetic or prosthetic implants. Silicone resins are used as electrical insulation for varnishes and as protective paint films.

In general, silicones possess good electrical properties and, as mentioned above, offer superior resistance to high temperatures and weathering. Silicones also possess a high degree of chemical inertness, are nontoxic, and are easy to process.

According to the sponsor, the purpose of the legislation is to stop the ad hoc basis of silicone classification. Currently silicones are classified in one of nine TSUS categories with duties ranging from 0 to 8.6 percent ad valorem. This is a result of the TSUS being established before silicones were commercialized. The rest of the industrial world treats silicones as a single product grouping in its tariff schedules; this legislation, then, would bring U.S. Customs practice in line with the customs practices of our trading partners. The silicone tariff rates of our major trading partners are much higher than ours, with rates of more than 10 percent. This bill, however, would not raise U.S. tariffs. Rather, the legislation is revenue neutral.

Silicone resins enter the U.S. under one of seven categories with column 1 duties ranging from 8% ad valorem (silicone rubber) to 13.5% (other organo-silicon compounds, benzenoid). All but one of the categories are eligible for GSP and all are eligible for CBERA.

U.S. production of silicones in all forms decreased from 328 million pounds in 1979 to 292 million pounds in 1983.

The markets for silicone fluids, elestomers, and resins, the products of chief significance in the draft legislation are each dominated by three producers. These producers are Dow Corning, G.E., McGhan Nusil Corp., Union Carbide Corp, and Dexter Corp.

Imports of the articles covered by this bill increased from 3.8 million pounds in 1981 to 13.9 million pounds in 1984. The corresponding increase in value was from $8.1 million to $23.3 million.

Export decreased slightly from 62.8 million pounds in 1981 to 62.1 million pounds in 1984. Although the value increased from $127.4 million in 1981 to $133.7 million in 1984.

Consumption dropped from 316.7 million pounds in 1981 to 243.8 million pounds in 1983. The ratio of imports to total consumption was 5.7 percent in 1983.

SECTION 219. CLASSIFICATION OF NAPHTHA AND MOTOR FUEL BLENDING STOCKS

(Originally introduced as H.R. 2396 by Mr. Matsui)

Section 219 would make several changes in part 10 of schedule 4 of the TSUS to modify the tariff treatment of some naphthas and create a new tariff item for motor fuel blending stocks. First, it would amend headnote 1 to part 10 to require that motor fuel blending stocks be classified in part 10 whether or not of benzenoid origin. Second, it would add to headnote 2 a new paragraph defining "motor fuel blending stocks" and require verification they actually be used in manufacturing motor fuels. Third, it would create new TSUS item 475.27 which defines all motor fuel blending stocks as "any product (except naphthas provided for in item 475.35) derived from petroleum, shale oil, or natural gas whether or not containing additives which is actually used for direct blending in the manufacture of motor fuel." This item's tariff rate would be identical to those on imported motor fuel.

Finally, it would amend TSUS item 475.30 (coverning kerosene derived from petroleum, shale oil, or both (except motor fuel)), to exclude from that item both such fuel and motor fuel blending stocks.

"Motor fuel blending stock" is a term used to refer to a variety of materials derived from petroleum, shale oil, or natural gas, which can be further processed into specification-grade motor fuel. It can also be used to describe materials that can be physically blended with other materials to make motor gasoline.

Motor fuel blending stocks could be used as a fuel in internal combustion or other engines but are outside the American Society of Testing Materials (ASTM) octane range. Generally, these products are mixed or blended with other chemicals, such as tetraethyl lead (TEL), to obtain a higher octane product that meets the ASTM octane specifications for motor fuel.

The legislation is designed to correct an anomaly currently in existence in the TSUS and made apparent by industry sources, according to the sponsor. Under current law, the Customs Service interprets the TSUS to require them to impose higher duties on certain components of motor fuels than on finished motor fuels.

From late 1983 through July 1984 a number of bills were introduced in Congress pertaining to the tariff reclassification of catalytic naphtha and motor fuel blending stocks/unfinished gasoline. H.R. 4232 proposed a duty rate of .25 cent per gallon on catalytic naphtha (a component used in the production of finished gasoline) and H.R. 5455 reclassified unfinished gasoline and motor fuel blending stocks by creating a new tariff item for them with a duty rate of 1.25 cents per gallon, the same rate as for finished motor fuel.

The Administration proposed a single alternative in May 1984 that was designed to satisfy both sets of bills. Due to the complexity of the products involved, the House-Senate conferees when discussing these bills determined that prior to furthur congressional action on the issue the ITC should be asked to examine the desirability of reclassification and its possible ramifications. The ITC released its report in April 1985.

Naphthas (whether straight or catalytic) and other motor fuel blending stocks are currently classifiable in part 1, and part 2, or part 10 of schedule 4 of the TSUS. Depending on its characteristics, a particular blending stock may be classified

(1) in part 1, item 407.16, as a mixture, in whole or in part of distillation/cracking/reforming process with no other chemicals added. Catalytic naphthas are included in this category.

(2) in part 10, item 475.35 as a mixture, *not* in whole or in part of benzenoid chemicals which is the result of distillation/cracking/reforming process with no other chemicals added. Column 1 duty is .25 cent per gallon and column 2 is .5 cent per gallon.

(3) in part 2, item 432.10, as a mixture such as (1) and (2) above, to which are added lead alkyls, ethyl alcohol or other nonbenzenoid organic chemicals. Column 1 duty is 5 percent ad valorem but *not less* than highest rate applicable to any component material. (This can result in rates as high as 10–15 percent ad valorem.)

If any of the above meet the ASTM criteria for motor fuel, they are classified as TSUS item 475.25 with a column 1 duty of 1.25 cents per gallon.

Between 1977 and 1985, approximately 158 refineries ceased operations. The typical closed refinery had a capacity of less than 50,000 barrels per day, with no cracking or other major crude petroleum upgrading facilities. During the period 1981-83, the refineries remaining open were primarily sophisticated units that operated at about 68-70 percent of capacity, compared with an average of 85 percent in 1979.

During the first half of 1984, the refinery capacity utilization rate averaged about 76 percent, as a result of higher gross inputs of crude petroleum to refineries and lower total refining capacity. Another factor contributing to the decrease in U.S. production of refined product and the subsequent decline in capacity utilization is an increase in offshore refinery operations. Currently, the world crude petroleum market is witnessing a situation of oversupply as well as excess refinery capacity. Some of the excess production of these offshore refinery facilities enters the U.S. market, which is already faced with decreased demand for these refined products.

U.S. production of motor gasoline has dropped form 7.0 million barrels per day (MBD) in 1977 to 6.5 MBD in 1984. Distillate fuel oil has dropped from 3.3 MBD to 2.7 MBD over the same period and residual fuel oil production has dropped even more precipitously from 1.75 MBD to .9 MBD over the period. The only product to show a gain in production over the period was LP gas which increased from 1.5 MBD to 1.7 MBD.

According to the 1977 Census of Manufacturers, 349 U.S. refineries were in operation in that year; however, as of January 1, 1983, the number of operating refineries had fallen to 225, with a total capacity to process 16.2 million barrels of crude petroleum per day. As of January 1, 1985, there were 191 operating refineries in the United States, with a crude petroleum capacity of 15.9 million barrels a day. The decrease in the operating refineries since 1977 is believed to result from the combination of factors, including decreased domestic demand for petroleum products, market shifts, increased transportation costs, consolidation of refinery operations, the end of the Federal entitlements program for small refineries, and the decontrol of crude petroleum prices in 1981. Of the total refineries in operation, 131 are operated by independent refiners, which account for 30 percent of U.S. refining capacity.

Employment in the petroleum refining industry decreased from 108,300 workers in 1979 to 100,600 in 1983. The number of production workers declined from 72,800 in 1979 to 64,700 in 1983.

The major states producing petroleum products are Texas, California, and Louisiana. As of January 1, 1985, these states accounted for about 41 percent of the total number of U.S. refineries and 57 percent of the total refining capacity.

The United States is a net importer of petroleum products, primarily from Venezeuela and refineries in the Caribbean nations. As a result of increased prices, the value of imports of all petroleum products increased form $11.4 billion in 1980 to $18.6 billion in 1984. U.S. imports of petroleum products could increase further as additional refinery capacity begins to be used in the OPEC nations as well as other conventional-energy-rich nations. As of January 1, 1985, the OPEC nations had the capacity to refine 4.8 million barrels per day of crude petroleum and are expected to have a refining capacity of 7.7 million barrels per day by 1987.

Residual fuel oils accounted for about 28 percent of the total value of U.S. imports of petroleum product in 1984. The major sources of U.S. imports of residual fuel oils in 1984 were the North Antiles (except the Bahamas) and Venezuela, together accounting for 41 percent.

U.S. import of distillate fuel oils increased irregularly from 15 million barrels valued $552 million in 1980 to 103 million barrels, valued at $3.3 billion in 1984. Venezuela, Mexico, and Canada supplied 54 percent of total 1984 U.S. imports of distillate fuel oils.

U.S. imports of motor fuel increased irregularly from 19 million barrels in 1980 to 102 million barrels in 1984; however, during the same period the value of these imports increased from $716 million to $3.2 billion. In 1983, the major sources of U.S. imports of motor fuel were the Netherlands, accounting for 20 percent, and Venezuela, accounting or 16 percent. In 1984, this situation was reversed, with the Netherlands supplying 14 percent and Venezuela 22 percent.

The value of U.S. exports of petroleum products increased by 265 percent during 1980–82. The reasons for this apparent dramatic growth include an increase in the unit value of petroleum product export and the 1982 relaxation of export restrictions. However, U.S. exports in 1984 declined by 25 percent to a value of $3.6 billion, because of the strength of the U.S. dollar in relation to other currencies and oversupply of products on the world market.

The major markets for petroleum products have been other developed nations lacking significant reserves of crude petroleum for use as a raw material base, especially Japan, Canada, the Netherlands, and Singapore. These four nations together accounted for nearly 50 percent of U.S. exports of petroleum products. A notable exception to this rule is Mexico, which was the third largest market in 1984.

Consumption of petroleum products decreased from 18.5 MBD in 1979 to 15.7 MBD in 1984. This resulted from consumer movement to conservation and use of alternative energy sources. Consumption of motor gasoline accounts for about 42 percent of total domestic consumption of pertroleum products.

It is unlikely that the enactment of the legislation would effect annual customs revenues, since motor fuel blending stocks have been and are currently being dutied at the motor fuel rate of 1.25 cents per gallon.

SECTION 220. TELEVISION APPARATUS AND PARTS

(Originally introduced as H.R. 2349 by Mr. Rostenkowski)

This section would amend headnote 3(a) to part 5 of Schedule 6 to define the term "complete" when used in reference to a television receiver as a receiver "fully assembled in its cabinet". The current headnote defines complete as "fully assembled."

Next, the bill adds another headnote to part 5, Schedule 6. It would require that picture tubes imported in combination with other articles are to be classified under the tariff provisions for picture tubes (TSUS item 687.35 through 687.44) *unless* they are to be incorporated into complete television receivers, word processors or ADP terminals or they are put up in kits containing all parts necessary for assembly into complete television receivers, word processors or ADP terminals. Because of the change in language of headnote 3 from "fully assembled" to fully assembled in its cabinet", the kit exception would only apply if *all* parts, *including, a cabinet,* were imported.

In an amendment offered by Mr. Rostenkowski, two temporary suspensions were added to the scope of this section. The first added 912.14 to TSUS to provide for an 11% duty until 10-31-87 for television picture tubes which would have been included in assembles (provided for in 684.96) except for the changes made by this section in headnote 4 to part 5 and except for the second temporary provision. The second provision adds TSUS item 912.16 and provides temporary duty free treatment until 12-31-90, for color picture tubes having a video display diagonal of less than 12 inches.

The purpose of these amendments was to provide a phase-in period for the application of the 15% rate of duty on those picture tubes which Customs had ruled were eligible to be dutiable at 5% as assemblies and to suspend the duty on small TV picture tubes which are not currently produced in the United States.

The purpose of this legislation is to prevent importers from taking advantage of what the Committee believes to be a loophole in the TSUS. Japanese picture tubes are sent to Mexico where they are paried up with, but not assembled with, chassis and control peanels. The merchandise is then shipped to the United States where it is entered as color television receiver assemblies at a duty rate of 5 percent ad valorem. The domestic industry believes that the picture tube portion of the entry should receive the 15 percent duty rate applicable to color television picture tubes.

Cathode ray tubes (CRT's) are used in a variety of products including television receivers, monitors for television studios, monitors for security systems, certain types of data display terminals for automatic data processing uses, video games, oscilloscopes and terminals for word processing applications. Television picture tubes are a type of CRT.

The principal differences between imported and domestic television picture tubes are in the screen size designations and physical mounting dimensions for the various tubes.

Until recently domestically-produced data processing and word processing products, including those incorporating video display terminals, have been considered qualitatively better than the imported products. However, foreign producers, particularly in Japan, Korea, Taiwan and Singapore, are progressing rapidly and are approaching the level of sophistication of U.S.-produced video display terminal producers.

Color television picture tubes are classified under TSUS item 687.35 dutiable at a column 1 rate of 15 percent ad valorem, and a column 2 rate of 60 percent ad valorem. Imports are not eligible for GSP but are eligible for CBERA.

Color assemblies (including kits containing all parts necessary for assembly into complete receivers) are classified under TSUS item 684.96, dutiable at a column 1 rate of 5 percent ad valorem and a column 2 rate of 35 percent. Imports are not eligible for GSP, but may qualify for duty-free treatment under the CBERA.

Domestic shipments of color television picture tubes increased from 11.6 million units, valued at $881 million, in 1980 to 12.3 million units, valued at $938 million, in 1984. This closely tracks the trend for all CRT's.

Despite a slight slump in 1982, domestic shipments of television receivers increased steadily from 1980 to 1984. Shipments increased from 10.3 million units, valued at $3.3 billion, in 1980 to 13.3 million units, valued at $4.1 billion, in 1984 for a total increase of 29 percent in terms of quantity and 25 percent in terms of value for the period. The average unit value of domestic shipments decreased slightly from $319.50 in 1980 to $309.40 in 1984.

The CRT producing industry (including television picture tubes) is a concentrated industry. There are some thirty manufacturers of CRT's in the United States. Many are captive producers, i.e., they make CRTs for their own use, and others rebuild old CRT's. The leading six noncaptive producers (G.E., Philips, RCA, Sony, Westinghouse, Zenith) of new CRT's represent more than 80 percent of domestic shipments of such CRT's.

Producers of CRT's generally buy the components they need to assemble the CRT's rather than making them. Producers of CRT's tend to be large corporations which also make many other products. Specific data on employment in the production of CRT's is not available. Employment in the production of all electronic tubes amounted to 35.5 thousand persons in 1982, the last year that data was available.

The U.S. industry producing television receivers consists of 17 firms. Of these, 5 are U.S.-based firms, 1 is Netherlands-based, 8 are subsidiaries of Japanese firms, 2 are Taiwanese-owned and the last is a South Korean based company.

Employment in the receiver industry has been declining in recent years and currently stands at about 25,000 persons. In 1983, the last year for which there were data, U.S. producers had gross profits amounting to over $240 million.

Matsushita Industrial Co., located in Franklin Park, Illinois, produces approximately 55 percent of the Panasonic and 82 percent of the Quasar color television sets sold in the United States. Most of the color televisions produced use imported television chassis and control panels assembled in Mexico. The assembled chassis and control panels are shipped to the United States together with color television picture tubes manufactured in Japan. The imported merchandise is then assembled into U.S.-produced cabinets with other U.S. and foreign components at Franklin Park.

U.S. exports of color television picture tubes decreased from 942,000 units, valued at $86.5 million, in 1980 to 347,000 units, valued at $32.4 million, in 1984. The largest export market in 1984 for U.S.-produced color television picture tubes was Canada. Exports to Canada in 1984 amounted to 313,000 units, valued at $28.1 million, or 90 percent of the total units exported.

Apparent consumption of color television picture tubes increased from 11.3 million units, valued at $827.8 million, in 1980 to 12.7 million units, valued at $952.2 million, in 1984. The ratio of imports to consumption, in terms of quantity, fluctuated between 5.2 percent and 8.1 percent during the period 1980 to 1984, with a ratio of 6.2 percent in 1984.

The effect of this legislation on revenue would depend upon the dutiable value of the picture tube portion of the merchandise. If we assume that one-half of the value of each color television kit imported in 1984 was attributable to the tube, the estimated revenue increase resulting from the duty increase on the tube from 5 percent to 15 percent would be approximately $2.9 million.

SECTION 221. BICYCLE-TYPE AND EXERCISER-TYPE SPEEDOMETERS

(Originally introduced as H.R. 2913 by Mr. Quillen)

The proposed legislation would delete item 711.93 from the TSUS and insert a new item 711.92, covering bicycle-type and exerciser-type speedometers and parts thereof. The column 1 rate of duty would be 18.3 percent ad valorem, 110 percent ad valorem for column 2 imports, and 17 percent ad valorem for imports from LDDC's. Staged rate reductions scheduled for item 711.93 would be made applicable to the new item 711.92.

A speedometer is generally an accessory for a bicycle, but it is usually standard equipment on an exercycle.

According to representatives of Stewart-Warner Corp., the private sector advocate of the bill and sole U.S. manufacturer of this type of speedometer, the provision would enhance the price competitiveness of the U.S.-made product by closing a TSUS loophole that unables importers to bring in speedometers that are identical to bicycle speedometers except for a 10 cents plastic gear that enables them to be mounted on the opposite side of a bike's front wheel (which is where exercycle speedometers go) and enjoy a 1.3 percent tariff treatment instead of the 19 percent tariff treatment that should apply.

The Department of the Treasury initiated an antidumping investigation on bicycle speedometers from Japan (TSUS 711.93) in June 1971; in June 1972 it made an affirmative dumping determination. As a result of this determination, the ITC instituted investigation No. AA1921-98 in June 1972. In September 1972, the ITC determined that a U.S. industry was injured by reason of such imports.

The Department of Commerce, in an administrative review dated July 2, 1982, ruled that speedometers used on exercisers and classified in TSUS item 711.98 would also be covered under the LTFV findings on bicycle speedometers and would be included in subsequent reviews. The amount of the anti-dumping duty currently imposed on the subject speedometers from Japan ranges from zero to 25% ad valorem.

Speedometers, other than for bicycles, which are covered by TSUS item 711.98 are assessed a column 1 rate of duty of 0.6 percent ad valorem. Bicycle speedometers (TSUS 711.93) are assessed a column 1 rate of 18.3 percent ad valorem. Articles under TSUS 711.98 are eligible for duty-free entry under GSP, if imported from designated beneficiary develping countries. Also, products of beneficiary countries entered under both tariff items are eligible for duty-free entry under CBERA.

Data on U.S. producers' shipments are not available, since their publication would constitute the disclosure of the operations of the sole firm in the industry, Stewart Warner Corporation.

U.S. imports of bicycle speedometers and their parts increased, in terms of value, from $2.6 million in 1980 to $4.4 million in 1984, or by 69 percent. Japan was the major supplier during 1980–84, accounting for 72 percent of such imports during the period. No CBERA-eligible countries supplied such articles during 1980–84.

Data on imports of speedometers for exercisers are not separately reported; however, such imports (included in TSUSA statistical annotation 711.9820) are estimated to have increased from $2.2 million to $3.8 million, or by 73 percent during the period. As with bicycle speedometers, Japan was the principal supplier of speedometers, tachometers and parts other than for bicycles during 1980–84, with a 63 percent share of such U.S. imports.

Data on exports of bicycle speedometers and exercise speedometers are not reported separately. Industry sources indicate that exports of such articles are negligible.

Data on apparent U.S. consumption of bicycle and exercise speedometers cannot be made available.

Estimated customs revenues would probably increase substantially if the new tariff item were enacted. Estimates of duties collected, based on 1984 imports of exercycle speedometers, indicate the revenues would increase from about $49,000 to $750,000, should the rate of duty increase from 1.3 percent to 19.6 percent on these articles.

SECTION 222. MARKING OF WATCHES AND WATCH COMPONENTS

(Originally introduced as H.R. 2029 by Mr. Anthony)

Section 222 amends headnote 4 to schedule 7, part 2E of TSUS, to retain present marking requirements except for the following changes:

Dials would no longer be subject to marking requirements.

The word "conspicuously" would be replaced by the word "legibly," because a conspicuous marking may not be possible on the bezel.

A fifth mode of marking—mold-marking—would be added.

The requirement concerning adjustments would be deleted.

The manufacturer would be given the option of marking either the watch case or the bezel.

The purchase of a particular watch or clock is partly dependent on the reputation of the country of manufacture for quality. Since the consumer rarely inspects watch and clock components, the labeling of internal parts of a timepiece offers no perceptible advantage to the consumer in differentiating quality. Accordingly, this legislation purports to reduce regulatory requirements which provide no apparent advantage to the consumer.

The duty on watches and clocks varies from a fairly straight forward duty on the assembled clock or watch to a duty equal to the sum of duties attributable to case and movements. With only a few minor exceptions these articles are not eligible for benefits under the GSP but are eligible for CBERA treatment unless they contain any material that is the product of a column 2 country. Watches and watch movements produced or manufactured in an insular posession of the U.S. are eligible for duty free treatment if they conform to the quota and other requirements of headnote 6 to schedule 7 which details a rather complex program of preferences enacted in 1982 designed to assist the watch industry in the U.S. Virgin Islands.

The estimated value of U.S. producer's shipments of watches, clocks and components decreased from $996 million in 1980 to $841 in 1984. Quantity data are not available due to the product mix included in the legislation.

U.S. imports of watches, clocks, and components, in terms of value, increased from $1,025 million 1980 to $1,227 million in 1981. Such imports then dropped to $658 million in 1983 and increased to $887 million in 1984, or by 34 percent. The leading supplier of watches, clocks, and components in 1984 was Japan, accounting for $347 million, or 39 percent of the total. Switzerland and Hong Kong followed with $180 million and $164 million (20 and 19 percent) respectively.

U.S. exports of watches, clocks, and components, in terms of value, increased from $67 million in 1980 to $84 million in 1981. Since then, they have steadily declined to $60 million in 1984, or by 30 percent since 1981. The Philippines was the leading market, receiving $13 million, or 22 percent of the total in 1984. Canada and Taiwan were the second and third largest market, receiving $11 million and $6 million (18 and 10 percent) respectively.

Apparent U.S. consumption rose from $1,954 million in 1980 to $2,094 million in 1981. It then declined to $1,534 million in 1983. Apparent U.S. consumption rose 9 percent in 1984 over that in 1983, to $1,669 million.

There would be no revenue effect of enactment of this legislation.

SECTION 223. CASEIN

(An amendment offered by Mr. Dorgan)

The proposed legislation would change the present tariff treatment of imported casein, in terms of both its classification and the applicable rates of duty. Imported casein is currently classified in schedule 4 of the Tariff Schedules of the United States (TSUS) covering chemicals and related products. This provision would reclassify the product under a provision in schedule 1, which covers agricultural products. As a result of this reclassification, the column 1 or most-favored-nation rate of duty applicable to imported casein would be 0.2 cent per pound duty rather than the current duty rate of "free". The amendment would broaden the product coverage of TSUS item 118.45 by amending the article description to include casein.

The Committee believes that casein is more appropriately classified as a dairy product in schedule 1, rather than a chemical product in schedule 4, because that is how it is predominantly used.

Casein, the principal protein fraction of milk, is manufactured by a precipitation process similar to that used in making cheese. Casein is produced in two major grades—food quality and industrial grade. The difference is primarily the absence of pathogenic organisms in the milk used, the level of sanitation standards maintained in the processing plant, and the amount of heat used in sterilizing the casein product. Industrial grade casein, made under lower sanitary standards, is less expensive than food grade; it may originate in countries where rinderpest, hoof-and-mouth disease, brucellosis, and/or tuberculosis are uncontrolled. The presence of these diseases in uncontrolled form in any country disqualifies its dairy products from food or feed uses in the United States.

Casein is utilized in two main areas—food, feed, and pharmaceutical uses (approximately 80 percent) and industrial applications (approximately 20 percent). In food, casein is an ingredient in synthetic cheese (primarily in frozen pizzas for home consumption), coffee whiteners, frozen desserts and whipped toppings, bakery products, and diet foods. The principal feed use is in calf-weaning supplements. Casein is also used in special infant formulas for lactose-intolerant children, as well as in some other medical, nutritional, and pharmaceutical applications. While insignificant in terms of the quantity used therein, the casein used in these products is critical to the health of persons requiring them and no known practical substitute for casein exists. Industrial uses are in glues, paper and textile coatings, and binders. Industrial usage of casein is declining as other products provide superior price or performance characteristics, while the quantity used in artificial cheese has grown rapidly.

U.S. dairy farmers, seeking additional markets for milk, have long focused on imported casein. Proposals to limit or impose a duty on casein have been introduced in every recent session of Congress.

In December 1979 the Commission submitted to the Committee on Ways and Means its report entitled Casein and Its Impact on the Domestic Dairy Industry (investigation No. 332–105, USITC Publication 1025).

Pursuant to request, the Commission conducted an investigation (No. 22–44) of the effect of casein imports on the domestic dairy price support program. It reported to the President on January 29, 1982 (USITC Publications 1217) that imports of casein do not have a deleterious effect on the operation of the dairy price support program.

Casein is provided for eo nomine in TSUS item 493.12, under the superior heading "Casein and mixtures in chief value thereof (other than a product described in item 118.45); item 118.45 covers milk protein concentrates. Imported casein enters the United States free of duty from all countries; accordingly, preferential tariff programs are inapplicable.

As indicated above, the column 1 rate of duty under TSUS item 118.45 (to which casein would be added) is 0.2 cent per pound. The column 2 duty rate is 5.5 cents per pound. In addition, imports from Israel enter the United States free of duty under the United States-Israel Free Trade Area Agreement; products of beneficiary countries under the Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA) also enter free of duty.

There is no known domestic commercial production of casein.

Importers include subsidiaries and affiliates of the Irish and New Zealand Dairy Boards (the principal exporters to the United States), U.S. dairy processing companies, and major industrial users of casein, as well as distributors.

There were no exports of casein from the United States in 1984.

Casein imports are presently free of duty. If this bill were enacted, casein would be subject to a 0.2 cent per pound duty under column 1 and a 5.5 cents per pound duty under column 2. In 1984, this would have resulted in an increase in customs revenues of approximately $310,000 for column 1 imports and $275,000 for column 2 (Polish) imports, or a total of $585,000.

Subtitle C—Temporary Changes in Tariff Treatment

SECTION 231. COLOR COUPLERS AND COUPLER INTERMEDIATES

(Originally introduced as H.R. 2474 by Mr. Duncan)

This legislation would amend item 907.10 and 907.12 of the Appendix to the TSUS to continue through December 31, 1990 the suspension of the column 1 rate of duty on photographic coupler intermediates provided for in item 907.10, an actual use provision; and on photographic color couplers provided for in item 907.12. The column 2 rate of duty would remain unchanged. The description of item 907.10 is amended to exclude from suspension the color coupler commonly referred to as C-1.

Coupler intermediates are organic chemical compounds that are used in the production of color couplers. A color coupler is a more advanced organic compound that is incorporated in photographically sensitized material and reacts chemically with oxidized color developers to form a dye. Color couplers are used to make color photographic paper, film and graphic arts materials.

The bill would enable the Eastman Kodak Co., a domestic firm, to continue to import duty-free for a temporary period certain color couplers and coupler intermediates that it does not make and that cannot be obtained domestically. Continuing the duty suspension would help keep its products (i.e., photographic color paper) competitive in U.S. and world markets. Eastman Kodak produces some color couplers and coupler intermediates for captive use; however, since its plants cannot meet all of its requirements, the company must import selected products.

The majority of imported coupler intermediates are currently classifiable in items 403.59, 404.90, and 406.42. Color couplers are classified in item 408.41, photographic chemicals. The column 1 duty rates vary from 11.7 percent ad valorem to 13.5 percent ad valorem. The column 2 rates vary from 7 cents per pound plus 50 percent ad valorem to 7 cents per pound plus 62 percent ad valorem.

Color couplers are eligible for duty-free treatment under the GSP and for the LDDC rate but coupler intermediates are not. Both are eligible for duty free treatment under the CBERA.

Data on domestic production is not available as it would reveal business confidential information.

Eastman Kodak is the principal domestic producer of coupler intermediates and color couplers, and its total production is for captive use in the production of photographic color paper.

Formerly, the 3M Co. produced photographic color paper, color couplers and intermediates in the United States, but also imported intermediates and color couplers from its Italian and English subsidiaries. 3M had been producing color couplers in the United States from imported coupler intermediates to reduce its requirements for imported color couplers.

In 1982 it requested the introduction in Congress of the bill (S. 2889) that resulted in the suspension of duties on color couplers and coupler intermediates. According to industry analysts, despite the duty suspension, 3M found it increasingly difficult to produce these products profitably in the United States and in 1984 ceased domestic production.

Import statistics on coupler intermediates and color couplers are not separately maintained. Eastman Kodak reported that in 1983 it imported approximately 155,000 pounds of these products, mostly from Japan and Western Europe. Because color couplers and intermediates are continually changing, Kodak could not predict its future imports exactly. It estimates, however, that imports of these products will increase by approximately 10 percent per year during the next few years.

Exact data is not available but exports are estimated to be negligible.

Consumption data on coupler intermediates and color couplers are not available. The photographic color paper production in the United States, however, can be used to determine the trend in consumption of these chemicals over a certain period. During 1977–80, U.S. sales of photographic color paper increased from an estimated $72 million to an estimated $200 million, and industry sources estimate that this growth pattern continued through 1984.

Based on 1983 import data obtained from Eastman Kodak, the potential loss of revenue resulting from enactment of this legislation would probably be about $110,000 per year.

SECTION 232. POTASSIUM 4-SULFOBENZOATE

(Originally introduced as H.R. 2332 by Mr. Evans of Iowa)

This section would suspend until December 31, 1990 the column 1 rate of duty for p-sulfobenzoic acid, potassium salt (potassium 4-sulfobenzoate). Column 2 would remain unchanged.

P-sulfobenzoic acid is used as an intermediate in the manufacture of probenecid which is a diuretic.

As one of two U.S. manufacturers of the drug probenecid, Salsbury Laboratories will use imported p-sulfobenzoic acid exclusively to produce probenecid. A company official states that by eliminating the duty on the subject chemical, U.S. manufacturers of probenecid will then be able to compete in the end-product market with low-cost imported probenecid. Approximately 26 percent of the U.S.

apparent consumption of probenecid was accounted for by imports in 1983.

The column 1 rate of duty of p-sulfobenzoic acid is presently 1.7 cents per pound plus 17.9 percent ad valorem. The column 2 rate of duty is 7 cents per pound plus 57 percent ad valorem. It is not eligible for GSP but is eligible for CBERA.

The chemical p-sulfobenzoic acid, potassium salt is not produced in the United States. Use of this chemical by Salsbury Laboratories, Inc. as an intermediate in production of probenecid began in 1983.

No records exist to show either the quantity or value of imports of this chemical during 1980–85. An industry source estimates that approximately 7,300 pounds, valued at about $26,000, were imported in 1984. The same source estimates 1985 imports to be about 9,100 pounds, valued around $32,000.

U.S. export data for p-sulfobenzoic acid and its salts are not available as this chemical is classified in a residual (basket) Schedule B number. According to industry sources, there are no U.S. exports of the subject chemical.

U.S. consumption is estimated to be approximately that of imports.

Revenue losses for 1986 are estimated to be $15,000 in 1986.

SECTION 233. 2,2′-OXAMIDO BIS-[ETHYL 3-(3,5-DI-TERT-BUTYL-4-HYDROXYPHENYL) PROPIONATE]

(Originally introduced as H.R. 2351 by Mr. Rowland)

The proposed legislation would temporarily suspend the column 1 rate of duty on imports of 2,2′-oxamido bis-[ethyl 3-(3-5-di-tert-butyl-4-hydroxphenyl) propionate], classified in item 405.34 of the TSUS until December 31, 1990. The column 2 rate of duty would remain unchanged.

The subject chemical is a synthetic organic chemical used by industrial processors and fabricators as a high-performance antioxidant and metal deactivator in various polymers, such as polypropylene, polyethylene, and polystyrene.

Although other antioxidants are used in polymer applications, this chemical meets specifications in specific applications not served by any other antioxidant currently produced in the United States.

The temporary duty suspension is intended to permit Uniroyal, which is the major U.S. importer, to supply this chemical to its customers in a cost-efficient manner. It is not currently produced in the United States. The Uniroyal Chemical Division of Uniroyal Inc. has indicated it cannot produce the chemical domestically without diverting fully utilized production capacity and facilities from the manufacture of other chemicals.

This chemical is classified in item 405.34 of the TSUS. The column 1 rate of duty is 13.5 percent ad valorem, and no preferential duty rate is afforded to imports from LDDC's. The column 2 rate of duty is 7 cents per pound plus 58 percent ad valorem. Imports of this chemical are not eligible for duty-free entry under GSP. However, imports are eligible for CBERA.

There is no domestic production.

Data on imports is business confidential.

U.S. consumption is apparently equal to imports.

If the estimated import and price levels of 1984 remain unchanged, the potential annual customs revenue loss would be approximately $50,000.

SECTION 234. DICYCLOHEXYLBENZOTHIAZYLSULFENAMIDE

(Originally introduced as H.R. 1265 by Mr. Campbell)

Section 234 would suspend the column 1 rate of duty for dicyclohexylbenzothiazylsulfenamide (DCBS), classified in item 406.39 of the Tariff Schedules of the United States (TSUS), until December 31, 1990, and would add item 906.45 to subpart B of part 1 of the Appendix to the TSUS. The column 2 rate of duty would remain unchanged.

DCBS is a rubber-processing accelerator which speeds the cross-linking reaction of rubber with sulfur. Sulfur bridge cross-links (vulcanization) makes the rubber harder and stronger, while eliminating the tackiness of untreated rubber. Rubber compounders use an average of 1.5 pounds of DCBS per 100 pounds of raw rubber.

The present duty on DCBS increases the manufacturing cost of steel-belted radial ply tires. At the present time, DCBS is not produced in the United States.

DCBS is classified in TSUS item 406.39, with a column 1 duty rate of 1.7 cents per pound plus 16.2 percent ad valorem. The column 2 rate is 7 cents per pound plus 52 percent ad valorem. LDDC rates are provided for this item. DCBS is not eligible for duty free treatment under the GSP. However, imports from designated Caribbean countries could be eligible for duty free treatment under the CBERA.

There is no domestic production

DCBS it is regarded as a specialty adhesion promoter, with specific application in the steel belting construction of radial tires. Domestic producers of other sulfenamide accelerators are American Cyanamid Co., B.F. Goodrich Chemical Co., the Goodyear Tire and Rubber Co., Monsanto Corp., and Uniroyal, Inc. These producers regard DCBS as a low-volume specialty accelerator that will not adversely affect their production or sales of sulfenamide accelerators.

The major importer of DCBS is Mobay Chemical Company, which imports it from its parent company, Bayer A.G. of the Federal Republic of Germany. From 1979 to 1983 imports of DCBS ranged from 88,000 to 190,000 pounds. Industry sources estimate that imports of DCBS during 1984 were less than 500,000 pounds.

There were no U.S. exports in the past five years.

Date on apparent U.S. consumption are not available.

The estimated revenue losses for the three-year period from 1985 through 1987, set forth below, are based on ITC data and industry sources.

Estimated revenue loss

Year:	*Thousands*
1985	$263
1986	317

1987	373

SECTION 235. 2,4 DICHLORO-5-SULFAMOYL BENZOIC ACID

(Originally introduced as H.R. 1734 by Mr. Jones of Oklahoma)

Section 235 would add item 906.48 to the TSUS to temporarily suspend the column 1 rate of duty on 2,4 dichloro-5-sulfamoyl benzoic acid (lasamid). The column 2 would remain unchanged. The duty suspension would be effective until December 31, 1990.

Lasamid is an intermediate chemical used to produce the drug furosemide. Lasamid is an odorless, white crystalline powder soluble in acetone, alcohol, and weak caustic solutions. As of 1985 only one U.S. pharmaceutical firm manufactured furosemide domestically and this same firm consumes about 95 percent of total imports of lasamid. Duty suspension would enable the company to be more competitive with imported furosemide.

Lasamid is currently tariffed at column 1 duty rate of 1.7 cents per pound plus 18% ad valorem. The column 2 rate is 7 cents per pound plus 57.5 percent ad valorem. Lasimid has no LDDC rate and no GSP eligibility but does qualify for duty free entry under the CBERA.

American Hoechst is the only significant importer of lasamid and imports have ranged from 48,766 lbs to 121,915 pounds over the past five years. In 1984 imports were 40,590 lbs. Lasamid cost approximately $10 per lb.

Data on U.S. consumption is not available.

Estimated revenue losses in 1986 are $190,000, in 1987, $198,000, and in 1988, $206,000.

SECTION 236. DERIVATIVE OF N-[4-(2-HYDROXY-3-PHENOXYPROPOXY) PHENYL]ACETAMIDE

(Originally introduced as H.R. 2352 by Mr. Rowland)

The proposed legislation would add new item 907.11 to the Appendix to the Tariff Schedules of the United States (TSUS) in order to suspend the column 1 rate of duty on derivatives of N-[4-(2-hydroxy-3-phenoxypropoxy)phenyl]acetamide until December 31, 1990.

The subject product is a fortifier for epoxy resins that is capable of improving the strength and elasticity of the resin while avoiding brittleness. The subject product is not currently produced in the United States. The epoxy resins and articles of plastics that are capable of being improved by the fortifier are produced in the United States. Import duties on the fortifier increase the cost of the fortifier to domestic epoxy resin manufacturers.

The fortifier for epoxy resins is classified in TSUS item 407.16, covering other mixtures in whole or in part of any of the product provided for in subpart 1B of Schedule 4 of the TSUS (benzenoid industrial organic chemicals). The column 1 duty rate of the fortifier is 1.7 cents per pound plus 13.6 percent ad valorem, but not less than the highest rate applicable to any component material; the column 2 rate of duty is 7 cents per pound plus 43.5 percent ad valorem, but not less than the highest rate applicable to any component material. The fortifier is eligible for duty-free entry under CBERA and GSP, (unless it is imported from Venezuela).

If the active ingredient of the fortifier were imported in a form that is 95 percent or more pure, the active ingredient would be classified under TSUS item 405.34. The column 1 rate of duty of 13.5 percent ad valorem under this tariff item would not apply to the mixture since it is lower than the column 1 rate of duty for TSUS item 407.16. The column 2 rate of duty under item 405.34, 7 cents per pound plus 58 percent ad valorem, would apply to the mixture if it were the highest rate applicable to any component material.

There is no domestic production.

Separate import data for the fortifier are not available, since this mixture is one of the many articles classified as "other benzenoid chemical mixtures". Since this product was patented in 1984, it is unlikely that there were any imports in commercial quantities The only known source of this mixture is Canada. No imports were supplied by columnn 2 sources. The importer of this chemical is Uniroyal, Inc.; the firm has projected a growing U.S. market for this product.

Apparent U.S. consumption is estimated to be approximately equal to the level of imports.

If the import quantities and price levels projected for 1985–87 are realized, the potential annual loss of customs revenue would amount to approximately $38,000 in 1985, $94,000 in 1986, and $157,000 in 1987. The quantity of imports of the fortifier is expected to increase significantly because of the improved strength and reduced brittleness that it imparts to epoxy resins.

SECTION 237. 1,2-DIMETHYL-3,5-DIPHENYL-1-H-PYRAZOLIUM METHYL SULFATE (DIFENZOQUAT METHYL SULFATE)

(Originally introduced as H.R. 2693 by Mr. Roe)

This section would amend Subpart B of "part" of the Appendix to the TSUS by adding a new item, 907.24, described as 1,2-dimethyl -3,5-diphenyl-1-H-pyrazolium methyl sulfate (difenzoquat methyl sulfate) provided for in item 408.22 of the TSUS. The column 1 and column 2 rates of duty would be "free" until December 31, 1990.

The chemical difenzoquat methyl sulfate is synthetically produced from benzene derivative and other chemicals. It is used as a selective postemergence herbicide for the control of wild oats in barley and wheat.

A number of the sponsor's staff stated that the bill was introduced on behalf of American Cyanamid Co., the only producer of this herbicide. A company official stated that elimination of the duty on this herbicide would result in a lower cost of the final product to U.S. consumers.

The herbicides difenzoquat methly sulfate is currently classified in a residual "basket" category for herbicides, not artificially mixed, which are provided for in the Chemical Appendix to TSUS item 408.19. Articles entered under item 408.19 are presently dutiable at a column 1 rate of 14.4 percent ad valorem, an LDDC rate of 13.5 percent ad valorem, and a column 2 rate of 7 cents per pound plus 48.5 percent ad valorem.

The herbicide is currently eligible for duty-free treatment under GSP and also under CBERA. Since September 1, 1985, imports of this product from Israel may be entered free of duty.

There has been no domestic production in the past 5 years. American Cyanamid holds the patent on this product and produces it only through their subsidiary in Belgium.

In 1984, imports of this herbicide amounted to approximately 540,000 pounds. All of the imports in 1984 came from the Netherlands and were shipped to American Cyanamid.

Data for domestic consumption of this herbicide are not available; however, an industry source indicated that domestic consumption during the past five years was essentially the same as imports.

Based on data provided by an industry source, the following are estimated revenue losses: $360,000 in 1986; 365,000 in 1987; and 385,000 in 1988.

SECTION 238. DICOFOL

(Originally introduced as H.R. 2311 by Mr. Schulze)

Section 238 would temporarily suspend the duty on 1,1-bis(4-chloropheny1)-2,2,2-trichloroethanol (Dicofol) for items entered between September 30, 1985 through December 31, 1990.

Dicofol is a synthetically produced chlorinated insecticide (more specifically, a miticide). It is currently being used on cotton, citrus fruits, field corn, beans, and approximately 60 other types of crops for the control of various species of mites. Other domestically produced miticides are also used to control mites on certain crops; however, Dicofol has the largest number of registered crop uses compared with other miticides. In many instances, Dicofol is the only registered miticide available.

Dicofol is classified in TSUS item 408.28, covering other insecticides. Articles covered by this item are dutiable at a column 1 rate of 14.9 percent ad valorem, an LDDC rate of 12.5 percent ad valorem, and column 2 rate of 7 cents per pound plus 64.5 percent ad valorem.

On January 12, 1984, Public Law 97-446 was enacted, which in its section 133 temporarily reduced the rate of duty on Dicofol to the rate applied to articles classified in TSUS item 408.24. The column 1 duty rate now applied to Dicofol imports as a result of this temporary legislation is 8.6 percent ad valorem.

Dicofol, as an article classified in TSUS 408.28 is eligible for GSP and CBERA.

There is no domestic production.

According to industry sources, U.S. imports of Dicofol in 1984 amounted to approximately 2.6 million pounds, valued at $5.9 million. The majority of these imports came from Italy and were shipped to Rohm and Haas. U.S. imports of Dicofol from the other foreign source in 1984, from Makhteshim-Agan in Israel, entered free of duty under the GSP. The exact quantity of GSP imports in 1984 is not available, since other chemicals are classified in the same tariff item.

Based on 1984 import levels, annual revenue loss is estimaed to be $600,000 during 1986–1990.

SECTION 239. CERTAIN KNITWEAR FABRICATED IN GUAM

(Originally introduced as H.R. 2225 by Mr. Blaz)

Section 239 suspends duty on sweaters from Guam assembled by U.S. citizens, nationals, or resident aliens from preshaped parts within guidelines of headnote 3(a) and within quota levels through October 31, 1992. This section is intended to apply solely to sweaters imported from Guam. Notwithstanding section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, it would not create new benefits or requirements for articles imported from the Northern Mariana Islands.

The articles in this legislation are full-fashioned sweaters, items of knit outerwear covering the body but not extending below mid-thigh. Full-fashioning is a method of construction in which the sweater parts are made to conform to the contours of the human body. The preshaped parts are then joined by a process known as looping or by sewing.

The purpose of the bill is to reinstate existing practice with respect to country of origin determination for duty assessment purposes for knit to shape apparel imported into the U.S. from Guam. The existing country of origin determination allows products to be considered products of insular possessions (general headnote 3(a)(1) if they do not contain foreign materials amounting to more than 70 percent of their total value. Sweater imports from Guam and the Commonwealth of Northern Mariana Islands (CNMI) have been able to benefit from this provision in the past.

Customs has recently, however, issued new final rules of origin for textiles which state that "trimming, and/or joining together by sewing, looping, linking, or otherwise completed knit-to-shape component parts produced in a single country . . . do not constitute a substantial transformation; therefore, a sweater completed by such a process is a product of the country of origin of the component part."

The interagency Committee for the Implementation of Textile Agreement (CITA) has established special quota exemptions for Guam and CNMI. However, the governments of these two insular possessions have protested that the quantities are too small and combined with the imposition of duties, will result in severe economic hardship.

This section addresses only the tariff, not the quota.

During 1984, the average rate of duty paid on sweaters was 27 percent ad valorem; the actual MFN rates ranged from 5 percent to 38.8 percent ad valorem. On February 27, 1985, CITA provided for special MFA quota exemptions for exports of sweaters from Guam and CNMI between November 1, 1984 and October 31, 1985. Exempted from quotas were 160,000 dozen sweaters of cotton, wool or man made fibers assembled in Guam and 70,000 dozen sweaters assembled in CNMI. Sweaters exceeding these limits are charged against the quota of the country of origin, usually where the parts were knit.

Domestic production of all sweaters and textile fibers increased from 9.2 million dozen in 1979 to 10.7 million dozen in 1983.

The number of establishments in the U.S. sweater industry declined from 837 in 1980 to 790 in 1983. At the same time employment decreased from 69,300 workers to 62,200. Much of the decline has been attributed to the increase in imported sweaters and the increased use of new high-technology, less labor-intensive machinery.

Imports of all sweaters of textile fibers rose from 12.5 million dozen in 1980 to 20.2 million dozen in 1984.

The four major suppliers—Taiwan, Hong Kong, Korea, and China—accounted for 76.5 percent of the 1984 imports. Faced with tight quotas, manufacturers in these countries have moved more production offshore to subsidiaries in smaller, less-developed countries and to U.S. insular possessions in the Pacific that have less restrictive quotas or no quotas.

Imports from Guam and the CNMI, which together accounted for approximately one percent of all sweater imports in 1984, increased significantly from 1982 to 1984. In 1982, the first year of production, Guam exported 33,000 dozen sweaters, valued at $2.7 million. By 1984, shipments of sweaters from Guam had increased 245 percent to 114,000 dozen, valued at $10 million. Production of sweaters in the CNMI began in 1984, when exports to the United States totaled 40,000 dozen, valued at $5 million.

Total sweater exports were small compared with imports and declined during 1980–84. Producers attributed this decline to the increased strength of the U.S. dollar and the resulting decline in the price competitiveness of their sweaters abroad. Exports decreased by 42 percent in quantity and by 56 percent in value during 1980–84 to 77,000 dozen, valued at $2.6 million.

Consumption rose from 19.2 million dozen sweaters in 1979 to 26.3 million dozen in 1983.

No change in revenue effect is expected as currently these sweaters are entering the U.S. duty free.

SECTION 240. 3,7-BIS(DIMETHYLAMINO)-PHENAZATHIONIUM CHLORIDE

(Originally introduced as H.R. 2312 by Mr. Schulze)

Section 240 would provide for a suspension of the column 1 rate of duty for methylene blue. The column 2 rate of duty would not be changed. The duty suspension would be effective with respect to articles entered or withdrawn for consumption on or after the 15th date after the day of enactment of the bill, and would be in effect until December 31, 1990.

Methylene blue is used as a dye for cotton and wool in the textile industry, as an indicator in chemical oxidation-reduction reactions, as a biological and bacteriological stain, as an antidote to cyanide poisoning, and as an anodyne and an antiperiodic. In addition, it is used as a processing stabilizer in the manufacture of acrylic monomers. Although other chemical stabilizers are produced in the

United States, this chemical meets specifications in selected applications not served by the other stabilizers.

The purpose of this bill is to suspend the duty on methylene blue since there is no domestic production.

The column 1 rate of duty of methylene blue is 22.7 percent ad valorem; the LDDC rate is 20 percent ad valorem; and the column 2 rate is 7 cents per pound plus 70 percent ad valorem.

Imports of this product are not eligible for GSP but are eligible for CBERA.

There is no domestic production.

Imports have averaged 36,000 pounds per year in the period 1979–1983 with the exception of a spurt in imports in 1980 to 94,000 pounds.

Based on most recent import data, revenue loss would be approximately $3,000 per year during 1986–1990.

SECTION 241. DINITRO-O-TOLUAMIDE

(Originally introduced as H.R. 2333 by Mr. Evans of Iowa)

Section 241 would temporarily suspend the column 1 duty on 3.5 dinitro-o-toluamide (TSUS 411.93). Column 2 would remain unchanged. The suspension would be until December 31, 1990.

The chemical, 3.5-dinitro-o-toluamide (commonly known as zoalene), is a bacteriostate that is used specifically as an additive to animal fees to inhibit or delay the development of animal coccidiosis, a disease caused by protozoan parasites. The disease primarily affects domestic animals and birds and only occasionally affects man and horses.

Salsbury Laboratories is the only domestic producer of zoalene. Demand for the product is confined to a small segment of the overall market for coccidiostats. As such, the firm is of the opinion that it might prove to be more economical and competitive to import the product as needed, rather than maintain domestic production. The possible suspension of the duty may be a significant factor influencing their decision.

The column 1 duty rate for zoalene is 9.5 percent ad valorem; the LDDC rate of duty is 8.1 percent ad valorem; and the column 2 duty rate is 7 cents per pound plus 67.5 percent ad valorem. Zoalene is not eligible for duty free treatment under the GSP but is eligible for CBERA duty free treatment.

Since there is only one domestic producer of this product, production data cannot be published because they would reveal confidential business information.

Zoalene accounts for less than a 10 percent market share among coccidiostats. The overall U.S. market for coccidiostats is estimated to amount to about $75 million to $100 million annually. There are at least three other such drugs that are more commonly used and together hold approximately 70 to 90 percent of the market, accordingly to industry sources. They could, conceivably, be substituted in place of zoalene. In general, however, the use of a particular coccidiostat in a given situation is determined by the species of coccidia involved and/or on whether the chemical agent is approved for use in the particular species and/or class of specifies needing treatment. Each of the coccidiostats has its own range of effectiveness. Thus, although some are used more commonly than others and may be able to be substituted for one presently in use, they do not necessarily cover the same scope in terms of species.

Import data are unavailable because this product is classified in a residual or "basket" TSUS category. According to an industry source, however, there have been no imports of zoalene in the last five years. The major sources for this product are Israel and Spain. An industry source has quoted an approximate market price of $2.00–$5.00 c.i.f. per pound for this product, using the current market price from Spain as an example.

Revenue losses are estimated to be $14,000.

SECTION 242. SECONDARY BUTYL CHLORIDE

(Originally introduced as H.R. 1546 by Mr. Broyhill)

This section would add item 907.55 to the appendix to the Tariff Schedules of the United States (TSUS) to provide for a suspension of the column 1 rate of duty for secondary butyl chloride until December 31, 1990. The column 2 rate of duty would not be changed.

The primary use of secondary butyl chloride is in the production of sec-butyllithium, a powerful chemical base and alkylating agent. Sec-butyllithium is in turn used by pharmaceutical and specialty chemical firms in the production of high-value-added chemicals.

Secondary butyl chloride is not currently produced in the United States, nor is it likely to be in the near future because of the extensive capital investment required, the corrosive materials used in the process, and the risks the producers must take. Downstream products of secondary butyl chloride, notably sec-butyllithium, are produced in the United States, and the suspension of import duties on secondary butyl chloride would allow domestic firms to compete more effectively with foreign producers of downstream products.

Secondary butyl chloride is classified under TSUS item 429.47, which has a column 1 rate of duty of 18 percent ad valorem, and a column 2 rate of 114.5 percent. Imports from eligible countries may qualify for the GSP and imports from beneficiary Caribbean countries may be eligible for duty free treatment under the CBERA.

Separate import data for secondary butyl chloride is not available. Imports of secondary butyl chloride are estimated to have remained at a level of about 400,000 pounds, valued at about $500,000, since 1980.

The only two known importers of secondary butyl chloride are Lithium Corporation of America, located in Bessemer City, NC, and Foote Mineral and Chemicals, located in Johnsonville, TN. Both use secondary butyl chloride in the production of sec-butyllithium and purchase from the only known foreign producer, Deutsche Texaco AG Chemie of West Germany.

Assuming the import quantities and price levels of 1984 remain unchanged, the potential annual loss would amount to $9,000. Import quantities are not expected to increase significantly because of limited demand for the downstream chemical products.

SECTION 243. CERTAIN NONBENZENOID VINYL ACETATE-VINYL CHLORIDE-ETHYLENE TERPOLYMERS

(Originally introduced as H.R. 2309 by Mr. Roe)

Section 243 would suspend the column 1 rate of duty on imports of nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, until December 31, 1990.

Vinyl acetate-vinyl choloride-ethylene terpolymer is a graft polymer and is used mainly in the manufacture of protective sheathing for fiber optic telecommunications cable. Small quantities of the terpolymer are also used as impact modifiers in the manufacture of rigid plastic profile forms for the construction market.

The terpolymer covered by this legislation is not now produced domestically and reportedly has no directly competitive domestic counterpart in the fiber optics sheathing market. The terpolymer is known to be imported by two U.S. firms at present.

Pantasote uses imported graft polymers to manufacture a patented plastic compound used to manufacture protective sheathing for fiber optic cable. It is the sole supplier of this patented material which it sells to a leading U.S. telecommunicatons company. The purpose of the proposed duty suspension is to enable Pantasote to continue to profitably manufacture this product, and to enable the telecommunications company to produce fiber optics competitively. No other U.S. company is producing these graft polymers.

Vinyl acetate-vinyl chloride-ethylene terpolymers, containing by weight less than 50 percent derivatives of vinyl acetate, is classified under TSUS item 445.48, which provide for other vinyl resins. Item 445.48 has a column 1 duty rate of 5.7 percent ad valorem and a column 2 rate of 43.5 percent. The rate for LDDC's is 5.3 percent ad valorem. It qualfies for GSP and CBERA duty free treatment.

There had been no domestic production since 1984 when the sole U.S. producer, Pantasote decided to go offshore to fulfill its needs for the product.

Official import statistics for the terpolymers covered by this legislation are not available. Imports of this product come from a firm in West Germany that is reportedly the only source producing a terpolymer with the properties necessary to meet the strict standards of the fiber optics industry. Pantosote, Inc. is the principal importer of the product. It began importing this material at the end of 1984 and projects that imports will be less than 5 million pounds in 1985, and will be less than 10 million pounds by 1989. Prior to 1984, imports of this terpolymer were negligible.

Based on projected imports, annual revenue loss is estimated to be from $196,000 to $419,000 in 1989 depending on how much of each type of the product is imported.

SECTION 244. TUNGSTEN ORE

(Originally introduced as H.R. 2360 by Mr. Flippo)

The legislation would suspend the column 1 rate of duty on tungsten ore until December 31, 1990. The column 2 rate of duty would not be affected.

Tungsten ore is the crude mineral form from which tungsten metal is obtained. The extreme hardness of tungsten makes it a perferred metalworking material for cutting edges of machine tools subject to intense wear or abrasion, as well as for metal surfaces in forming and shaping dies. The mining and petroleum industries, for example, use considerable quantities of tungsten carbide in drill bits, in the cutting edges of earth moving equipment, and in crushing machinery.

Mill products made from tungsten metal powder are used by the electronics and electrical industries.

In 1984 the end uses of tungsten were as follows: metalworking, mining and construction machinery and equipment, 75 percent; electrical machinery and equipment, 9 percent; lamps and lighting, 7 percent; transportation, 5 percent; and other, 4 percent.

According to industry sources, in the past few years there has been very little domestic tungsten concentrate available for the processing industry since (1) mine production has been at low levels for three years due to low concentrate market prices, and (2) most mine production has been captively consumed by producers of ammonium partungsate. The United States relied on imports of tungsten ore and concentrate for over 55 percent of reported consumption for the past three years, with well over half of the imports entering duty-free as a result of GSP. Domestic mining/processing companies purchase imports to augment their own production and could, therefore, benefit from the temporary duty suspension which would have the result of lowering the cost of the imported raw material.

U.S. imports of tungsten ore and concentrate are classified in TSUS item 601.54 with a column 1 duty of 17 cents per pound. tungsten ore is eligible for duty-free entry under both the GSP and CBERA.

The tungsten industry is highly concentrated, and most companies are vertically integrated. In 1984, about 95 percent of the domestic tungsten concentrate production came from three mines in California and Colorado. Most major domestic mines operated below capacity or were temporarily closed, primarily due to low concentrate prices and demand. Mine capacity utilization was 24 percent in 1984.

U.S. imports of tungsten ore increased from 11.3 million pounds in 1980 to 12.8 million pounds in 1984. In 1984, tungsten ore was supplied by Canada (25 percent), Bolivia (22 percent), Thailand (13 percent), Portugal (10 percent) and Peru (10 percent). There were no imports of tungsten ore from column 2 sources. Of the GSP imports, Bolivia accounted for 32 percent; Thailand, 18 percent; Portugal, 15 percent; and Peru, 15 percent.

U.S. exports of tungsten ores decreased from 2.0 million pounds in 1980 to .3 million pounds in 1984. The market for tungsten ore in 1984 were West Germany, 38 percent; Austria, 22 percent; Brazil, 19 percent; Mexico, 16 percent; and France, 5 percent.

Apparent U.S. consumption of tungsten concentrates (pounds of contained tungsten) decreased from 20.4 million pounds in 1980 to 18.9 million pounds in 1984.

Based on the levels of total and GSP imports of tungsten ore in 1984, it is estimated that enactment of this legislation would result in the loss of customs revenues of approximately $659,000 annually.

SECTION 245. CERTAIN STUFFED TOY FIGURES

(Originally introduced as H.R. 2335 by Mr. Gradison)

Section 245 would temporarily suspend the column 1 rate of duty applicable to imports of toy figures of animate objects, not having a spring mechanism and not exceeding 25 inches in either length, width, or height and valued over 10 cents per inch of height, classified in item 737.30 of the TSUS. The duty suspension would be in effect through December 31, 1990.

These products are stuffed toy animals or figures having predominantly humanoid or animal-like features and are not commonly known as dolls. Stuffed toy figures of animate objects range from small inexpensive curiosities to larger-than-life-size animals and characters costing many hundreds of dollars. One category of stuffed animal is the low-quality, inexpensaive animal of rather simple design, generally used as prizes in carnival games. However, the proposed legislation only covers those figures valued over 10 cents per inch of height, a category in which few carnival stuffed toys fall. The remaining stuffed toys either have a smooth cloth exterior or are plush—a trade term referring to a soft and pliable stuffed toy generally having a furry or velvet-like exterior that may simulate the coat of a living animal.

Although this product group consists of toys both for children's use and for collection or decoration, most stuffed toys are intended for use as children's toys.

Complete stuffed toy figures and skins for such figures are domestically produced. Because stuffed toy animals are often large in size, reduced freight costs are often more important than higher labor costs in encouraging domestic production. Therefore, domestic production is generally concentrated in the largest toys and imports in the smaller sizes. However, the freight cost for skins is a much less important factor than the labor cost, so that there is significant domestic production consisting of stuffing imported skins. In general, imports are said to be comparable in quality to domestically produced stuffed toys. The duty suspension proposed by this legislation was originally proposed as a part of broader legislation that eventually resulted in a temporary duty suspension on stuffed dolls, doll skins and stuffed or filled toy figures of inanimate objects. These items are the subject of H.R. 2238 introduced by Congresswoman Schneider. Items covered by TSUS 737.20 were removed from the 1982 legislation because of opposition from some importers and producers.

This new proposal results from the varied application of duty-free treatment of the subject articles under GSP and CBERA. Korea, the leading foreign supplier exceeded its competitive need limitations and Taiwan lost its duty free eligibility on July 1, 1985 for the same reason. China, the third largest supplier is not eligible for any preferential tariff programs. The remaining suppliers are a mixed bag, some having only GSP eligibility and some having that and CBERA. Most of the larger U.S. firms in the stuffed toy industry source from more than one of these countries, some from all seven.

The subject toys are currently dutiable at a column 1 rate of 5.9 percent ad valorem, column 2 of 70 percent and an LDDC rate of 5.5 percent.

For the purposes of Customs classification, the terms "animate" has traditionally included only animals or humanoid figures (other than dolls) that are predominantly earthly in nature. Nonearthly creatures, robots, machines, and vegetable or mineral objects vested with human or animal features are excluded, as are creatures that are hybrids of two or more earthly creatures.

The production of the subject articles was $86 million in 1980 and increased to 163.1 million in 1984. This includes the value of imported parts incorporated in the toys. Production using imported skins increased by approximately 75 percent between 1983 and 1984.

Specific information concerning the domestic industry producing only the products covered by the legislation is not available. However, there were approximately 200 U.S. firms producing all type so dolls and stuffed toys in 1984. Employment in the doll and stuffed toy industry, which prior to 1982 had been declining, recovered somewhat in 1984, rising to about 7,800 employees, including about 6,600 production and related workers. The industry is concentrated in New York, New Jersey, California, and the New England states.

Nearly all domestic producers, including all the major firms, import to some extent. These activities range from the importation of skins to significant investment in foreign production facilities for supplying both U.S. and foreign markets. Although there is some production of complete stuffed toys in the United States, most domestic producers of the toys covered by the legislation rely on imported skins. Those toys that are entirely manufactured in the United States are either the very large toys or those toys sold as specialty items that do not usually compete in the "children's" toy market."

Imports of the subject articles increased from 38.7 million units in 1980 to 166.7 million units in 1984. As previously stated the top 3 importing countries were Korea (58 percent), Taiwan (27 percent) and China (6 percent). Imports under the GSP were 47.1 million units in 1984. CBERA imports were 600,000 imports in 1984.

U.S. exports of stuffed toy figures of animate objects consist primarily of (1) unfinished goods intended for further processing and reexport to the United States and (2) high-priced specialty items that compete in other markets in the same manner that U.S. imports form developed countries compete in the U.S. market. As such, U.S. exports were extremely limited, not exceeding 7 percent of producers; shipments in any year of the period 1980–84, and usually far less than that.

Consumption increased from $145.4 in 1980 to $465.5 million in 1984. Imports as a share of consumption (in value) rose from 43 percent in 1980 to 65 percent in 1984. If the import value is inflated to the first U.S. billing value the 1984 figure swells to 80 percent.

Assuming that imports from Korea and Taiwan remain ineligible for duty-free treatment under the GSP during 1986–90 and that

China does not gain GSP eligibility during the period, the enactment of the legislation would result in an estimated customs revenue loss of $25 million to $30 million in 1986 and an estimated annual loss of $20 milion to $25 million during 1987–90.

SECTION 246. CERTAIN PLASTIC SHEETING

(Originally introduced as H.R. 2347 by Mr. Mrazek)

Section 246 would provide duty-free treatment to one type of plastic sheeting presently classified in item 774.55 of the TSUS. A new item 774.52 would be added to grant duty-free entry to articles from countries entitled to column 1 duty rates. The column 2 rate of duty would remain 80 percent ad valorem.

The material covered by H.R. 2347 is lead-impregnated, transparent, plastic sheet, generically termed "acrylic sheet," which combines two properties—superb light transmission and radiation shielding. Included in the general composition of the sheet is lead in the amount of 30 percent by weight, although this can vary from lot to lot by about 1 to 3 percent. A sheet containing about 13 percent lead by weight is expected to enter the market soon.

Leaded acrylic sheet is used in a variety of products, ranging from shielding screens that allow doctors to view X-ray treatment while being protected from X-ray exposure to filters that control the amount of X-ray exposure to the patient.

Hospital officials reportedly do not consider unleaded acrylic sheet to be an acceptable substitute for leaded acrylic sheet as a radiation barrier, which is at present the only use for leaded acrylic sheet.

The current column 1 rate of duty for the subject sheeting is 6.1 percent ad valorem, the LDDC rate is 5.3 percent and the column 2 rate is 80 percent. The product is eligible for duty-free entry under both GSP and CBERA.

Although a licensing agreement exists to produce the polymer, no U.S. commercial production is currently occurring.

There is one importer of leaded acrylic sheet from Japan, presently the only source of the product. During 1980–84 imports of the product ranged from below $200,000 in 1980 to approximately $450,000 in subsequent years. The current market price for the leaded sheet ranges from about $12 per square foot to about $170 per square foot.

Estimated revenue losses are $30,000.

SECTION 247. DUTY FREE ENTRY OF PERSONAL EFFECTS AND EQUIPMENT OF PARTICIPANTS AND OFFICIALS INVOLVED IN THE 10TH PAN AMERICAN GAMES

(Originally introduced as H.R. 2723 by Mr. Jacobs)

The proposed legislation would add a new temporary provision to the Appendix to the TSUS to grant duty-free entry into the United States for the personal effects, equipment, and other articles of foreign participants coming to Indianapolis, Indiana in 1987 for the Tenth Pan American Games. Similar duty treatment would also be provided to articles entered by officials for the Games, accredited members of delegations, immediate family members of any of the above, and any servants to such persons. The duty suspension would be administered under the terms of regulations promulgated by the Secretary of the Treasury and would continue through September 30, 1987. The new tariff item, designated as Appendix item 915.10, would be for articles entered after May 31, 1986.

The proposed legislation is similar to a previously enacted provision which granted temporary duty-free entry to articles brought to the United States for use during the Los Angeles Olympic games held in 1984. Specifically, proposed TSUS item 915.10 would utilize the same article description (other than the different reference to the title of the Games) as was employed in prior TSUS item 915.00, which expired on September 30, 1984. The duty suspension is conditional that the articles are required to be consumed, destroyed or exported and not to be sold commercially in the United States. The Secretary of the Treasury is empowered to issue regulations concerning the scope and operation of item 915.10.

With the duty suspension provision, persons eligible to use it would not be compelled to obtain a temporary importation bond for the amount of customs duties otherwise applicable, then wait for a duty refund following proof that the articles had been exported from the United States.

There would be no effect on revenue.

SECTION 248. DOLL WIG YARNS

(Originally introduced as H.R. 2306 by Mr. Manton)

This section would suspend, until December 31, 1990, the column 1 rate of duty on certain specialty yarns of manmade fibers covered by TSUS items 309.32 and 309.33. The column 2 rate of duty would remain unchanged.

The manmade fiber yarns covered by this bill include grouped nylon, polypropylene, or modacrylic fibers of continuous length—referred to as filaments—that are colored and not textured, whether or not curled. These yarns are packaged on spools or other containers not more than 6 pounds each. Although these yarns are used by proponents of the bill to produce doll wigs, they are also used in a variety of other products, most notably handcraft rugs, macrame items, and baler twine.

The proposed legislation was introduced by Representative Thomas Manton on behalf of A&B Artistic Wig Corporation on Long Island City, New York, which claims that the specialty manmade-fiber yarns used to produce wigs for dolls are not domestically produced and therefore should be eligible for duty-free treatment.

The average ad valorem equivalent (AVE) duties paid on all imports under the categories covered by this legislation ranged from 10.3 to 14.7 percent in 1984. U.S. imports of the subject yarns are not controlled under the MFA. Additionally, these yarns are not eligible for duty free treatment under GSP of CBERA.

Because the level of domestic production of certain specialty manmade fiber yarns used to manufacture wigs for dolls is low, specific information identifying this sector of the manmade fiber industry is not available. However, it is estimated by the American Yarn Spinners Association that there are fewer than 10 domestic producers.

Industry sources believe that U.S. production of the subject yarn is less than 1 million pounds annually

U.S. imports were estimated to have been 106,000 pounds in 1980 increasing to 431,000 pounds in 1984. During 1984, the leading sources were believed to be Japan, Taiwan, West Germany, and the United Kingdom. A&B Artistic Wig Corporation expects to import about half a million pounds per year of these yarns for doll wigs.

The import duties for 1984 that would not have been collected had this legislation been in effect were approximately $138,000 at the column 1 rates.

SECTION 249. CARDING AND SPINNING MACHINES

(Originally introduced as H.R. 2310 by Mr. Schulze)

This legislation would amend the Tariff Schedule of the United States (TSUS) to suspend the existing column 1 rate of duty on spinning, twisting, doubling, and other machines specially designed for wool. The provision would also cover machines used to prepare for spinning wool intended for specified applications. Machines for making combed wools (worsted) yarn would be excluded.

The subject machines are used in the preparation of wool and the manufacture of yarns.

Spinning machines are used to reduce the roving (soft strand of loosely assembled fibers made from sliver for spinning into yarn) to the required fineness, and to twist and then wind the yarn onto a cap, bobbin, or paper tube.

Doubling machines simply take two, three, four or more single strands of sliver (untwisted continuous brand of fibers resulting from the carding process) or yarn and wind them onto one cone. The purpose of this operation is to increase the uniformity of the strand which is ultimately to be transformed into finished yarn.

The legislation was introduced on behalf of the members of the Northern Textile Association (NTA), textile fabric manucfaturers located primarily in the Northeastern States. The association was primarily interested in machines specifically intended for spinning and carding wool into yarns, since it reports few such machines are domestically produced.

Spinning, twisting doubling, and other machines specially designed for wool are provided for in TSUS item 670.04. This provision includes all machines used to produce yarns from wool; however, the Customs National Import Specialist indicates that identifying those machines which are "specially designed" can be difficult. The column 1 rate of duty is 5.3 percent ad valorem and the column 2 rate is 40 percent. Imports are eligible for GSP and CBERA.

According to industry sources, between 30 and 40 domestic firms produce spinning, twisting, doubling or other machinery designed for producing yarn from wool, cotton, synthetics, or blends.

Estimated U.S. production of all spinning, twisting, doubling, or other machinery designed to prepare yarns (including those from wool) increased by 12.5 percent from $57.5 million in 1980 to $64.7 million in 1984. Since the majority of these machines are capable of processing wool, cotton, and synthetics, it is not possible to differentiate based on fiber type. Few of these machines are manufactured or designed solely to produce wool, according to industry officials.

The quantity of imports increased irregularly from 262 units valued at $398,000 in 1980 to 391 units valued at $2,151,000 in 1984.

In 1984, the principal sources of U.S. imports of these machines were West Germany (accounting for 37 percent of total imports), France (accounting for 36 percent of total imports), and Belgium (representing 22 percent of total imports).

U.S. exports of these machines averaged about 1,500 units per year during 1980–1984. (Exports of machinery based on type of yarn produced are unavailable.) Canada and Mexico were the principal markets for these exports.

During the period 1980–84, apparent U.S. consumption of all spinning, twisting, doubling, and other machines designed for preparing and producing yarn (including wool yarns) increased from $134.7 million in 1980 to $236.7 in 1984.

Based on 1984 import levels, annual revenue loss would average approximately $104,000 during 1986–88.

SECTION 250. CERTAIN BICYCLE PARTS

(Originally introduced as H.R. 2350 by Mr. Rostenkowski)

The proposed legislation would affect the customs treatment of bicycle parts in two areas. First, it would continue the duty-free treatment of certain parts from June 30, 1986, until December 31, 1990. Some bicycle parts would be deleted from the enumeration of articles now afforded duty-free entry, while others would be added to that list. With the exception of caliper brakes, none of the parts which would be covered by the amended duty suspension provision are produced on a commercial scale in the United States. Second, the legislation would continue during the same time period the prohibition on the application of the Foreign-Trade Zones Act to bicycle component parts unless those parts are reexported, either as parts or as components of complete bicycles.

Most bicycle parts are made from steel, alloy metals, rubber, or plastics materials. U.S. bicycle manufacturers either produce parts in their plants or purchase from domestic or foreign sources the parts needed to manufacture bicycles. With one exception, certain parts (primarily those for multispeed lightweight bicycles) are not produced in the United States and currently enter duty-free under temporary TSUS item 912.05 an 912.10. Many of the imported parts are said to be a higher quality than similar U.S. parts; U.S. producers of bicycle components face significant direct price and quality competition for all of the parts they supply.

Most bicycle parts, when imported separately, are classified as "parts of bicycles" in TSUS item 732.30 through 732.42. Other components, however, are classified in accordance with general headnote 10(ij) under more specific (often *eo nomine*) provisions elsewhere in the TSUS. The column 1 rates of duty on the subject parts are currently suspended but absent suspension these rates range from approximately 5 percent AVE to 11 percent AVE. Some of the items are GSP eligible and all are eligible for CBERA.

Two industries produce articles involved in the proposed legislation: the domestic industry manufacturing bicycle components and that producing bicycles. Manufacturers of bicycles also make certain basic parts, such as tubing for fames, handlebars, rims for wheels, and other parts requiring basic bending and pressing operations.

With the exception of caliper brakes, there are no U.S. firms known to be producing on a commercial scale any of the articles which would enter duty-free under this legislation. One firm, Dia-Compe, Inc. a wholly owned subsidiary of Yoshigai-Kikai Co., Ltd., Osaka, Japan, produces caliper brakes. However, all the caliper brakes produced by Dia-Compe are assembled from parts imported free of duty from its parent company. The only product which the firm produces is caliper brakes.

The bicycle component parts industry consists mainly of small businesses, the number of which is believed to have decreased below fifty in 1984; employment was estimated to be about 1,500 in that year.

In 1984, eight firms accounted for virtually all of the domestic output of bicycles. According to their estimates in recent annual reports, Huffy accounted for "in excess of 40 percent" and Murray-Ohio for about 36 percent of U.S. producers' shipments. In 1984, total employment in the bicycle industry amounted to an estimated 5,500 employees.

Imports of bicycles increased from 2.2 million units in 1980 to 4.7 million in 1984. On a quantity basis, Taiwan and Japan were the two principal suppliers of bicycles in 1984, providing the United States with 3.7 million units, or 78 percent, and 584,000 units, or 12 percent, respectively, of total imports. In 1984, U.S. imports of bicycles from sources assessed the column 2 duty rate amounted to 38,245 bicycles, valued at $927,647. Complete data on U.S. imports of bicycle component parts are not available; as a result of general headnote 10(ij), certain articles are classified in broad or residual TSUS items covering many other types of articles. Imports of those items for which data are available decreased from $208 million in 1980 to 204 million in 1984. The principal sources of such imports in 1984 were Japan, $88.7 million or 46 percent; Taiwan, $72.3 million, or 35 percent; Italy, $13.7 million, or 7 percent; and the Republic of Korea, $11.7 million, or 6 percent.

A substantial proportion of parts of bicycles provided for in various TSUS items in schedule 7, part 5, subpart C, now enter free of duty under TSUS item 912.10. Complete separate data are not currently available on the volume of such duty-free imports in 1984. However, partially estimated data for such imports recorded $1.1 million under TSUS item 912.05 (generator lighting sets) and an estimated $60.0 million under item 912.10. In 1984, duty-free imports entering under item 912.10 accounted for 44 percent of total imports dutiable and duty-free, of all parts entered in subpart C, part 5, of schedule 7.

Data on U.S. exports of bicycle parts are available only for those parts of bicycle classified in the STUS under schedule 7, part 5, subpart C of the TSUS, and for bicycle tires and tubes. Exports of these parts decreased from $14.5 million in 1980 to $12.0 million in 1984. The articles covered in the proposed duty suspension are not exported because they are not produced in the U.S. with the exception of Dia-Compe caliper brakes which are not exported.

Exports of bicycles decreased from 92,000 units in 1980 to 31,000 units in 1984. The data illustrate that exports of bicycles have not been important for the U.S. bicycle industry. Thus, the continued restriction of FTZ operations to the manufacture or reexport of finished bicycles or parts would appear for practical purposes to preclude the use of zones for bicycle production or assembly.

Comsumption of parts increased form $226.9 million dollars in 1980 to $236.2 million dollars in 1984. Consumption of bicycles increased from $680.4 million dollars in 1980 to $822.4 million in 1984.

Based on 1984 data, apparent U.S. consumption of caliper brakes was about 3.3 million brakes, 2.3 million of which were supplied by imports. Consumption of bicycle tires and tubes decreased from 11.8 million units in 1980 to 9.5 million units in 1983.

Using several assumptions it is estimated the extension of the FTZ provision would result in a savings of $1.5 million.

The extension of the duty free status of certain bicycle parts would result in a revenue loss of $5.8 million in 1986.

SECTION 251. 1-(3-SULFOPROPYL) PYRIDINIUM HYDROXIDE

(Originally introduced as H.R. 4196 by Ms. Oakar)

This section, would suspend for two years the column 1 rate of duty on imported 1-(3-sulfopropyl) pyridinium hydroxide, classified in item 406.42 of the Tariff Schedules of the United States (TSUS). It would amend subpart B of part 1 of the Appendix to the TSUS to add a new item 906.48, with dutyfree entry for articles from column 1 countries. The suspension would commence 15 days after the date of enactment and end on Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The chemical, 1-(3-sulfopropyl) pyridinium hydroxide, is a liquid with a density of approximately ten pounds per gallon. It is synthesized from propane sultone and pyridine. The subject chemical is used exclusively in a proprietary formulation for copper and nickel electroplating baths.

At the present time, this chemical is classified in TSUS item 406.42 (other heterocyclic compounds and their derivatives) with a column 1 rate of duty of 13.5 percent ad valorem. The column 2 rate of duty is seven cents per pound plus 52 percent ad valorem. The product is not eligible for duty-fee entry under the Generalized System of Preferences (GSP); however, it is eligible for duty-free treatment under Caribbean Basin Economic Recovery Act (CBERA) and under the United States-Israel Free Trade Area Implementation Act of 1985 as indicated in the Special column. No least developed developing countries rate of duty is provided.

Industry sources and Commission records show that there were no U.S. producers of 1-(3-sulfopropyl) pyridinium hydroxide in the past five years. The Shell Chemical Company, the only U.S. producer of propane sultone, one of the raw materials used to synthesize 1-(3-sulfopropyl) pyridinium hydroxide, stopped production of propane sultone due to the associated industrial hazards.

As the subject chemical is classified in a residual (basket) TSUS item, the separate quantity or value of imports during 1980–85 are not available. Industry sources estimate that during this period a total of approximately 250,000 pounds of the subject chemical, valued at about $625,000, were imported into the United States. It is estimated that imports can be expected to grow by approximately ten percent each year during 1986–88.

According to industry sources, there are no U.S. exports of the subject chemical.

Domestic consumption during 1980–85 was essentially the same as imports.

Based on estimates from industry sources, the expected customs revenue losses are $19,000 in 1987 and $20,000 in 1988.

SECTION 252. D-6-METHOXY-A-METHYL-2-NAPHTHALENEACETIC ACID AND ITS SODIUM SALT

(Originally introduced as H.R. 4283 by Mr. Wirth)

The proposed legislation would establish a new item in the Appendix to the Tariff Schedules of the United States (TSUS) in order to afford temporary duty-free treatment to imports of d-6-methoxy-a-methyl-2-naphthaleneacetic acid from countries entitled to column 1 rates of duty. The column 2 rate of duty would not be affected by the bill, and the suspension of the column 1 rate of duty would continue through December 31, 1990.

The subject products are pharmaceutical intermediates which are covered by U.S. and foreign patents and are utilized in the manufacture of anti-inflammatory drugs used to treat arthritis. According to the proponent of the legislation—the owner of the patents—basic materials are exported from the United States to the Bahamas and to Ireland, which grant duty-free entry thereoto on the basis that there is no domestic supplier of the materials (because of the patents). In those two countries, the basic materials are manufactured into the subject intermediates, which are then shipped to Puerto Rico for futher processing and packaging; the intermediates contain both U.S. and foreign component chemical products. It is believed that no substitute for the finished drugs exists for those persons for whom it is prescribed. Because of the patents, no U.S.-produced alternative source for the subject intermediates exists. The acid, known as naproxen, has the chemical formula C14H1403 and the sodium salt has the formula C14H13Na03.

These products are classified in item 412.22 of the TSUS, which covers nonenumerated analgesics, antipyretics, and nonhormonal anti-inflammatory agents. These articles are dutiable at a column 1 rate of 7.6 percent ad valorem, a least developed developing countries rate of 6.8 percent ad valorem, and a column 2 rate of seven cents per pound plus 47.5 percent ad valorem. Imports from beneficiary countries under the GSP and the Caribbean Basin Economic Recovery Act (CBERA) are eligible for duty-free entry as are products of Israel. The column 1 rate of duty for this tariff item will be reduced as of January 1, 1987 to 6.8 percent ad valorem as a result of concessions granted in the Tokyo round of the Multilateral Trade Negotiations.

There is no known domestic production of the subject products. Syntex Corporation, the owner of the patents on these products, manufactures some of the raw materials for the subject products at their facility in Boulder, Colorado.

Because there is only one firm involved in trading these intermediates, such data cannot be included since they would reveal confidential business information.

It is believed that the maximum customs revenue loss annually during the period of the duty suspension would range from $150,000 to $325,000, varying with the quantities of the subject products imported and with the amount of drawback of customs duties claimed by the U.S. importer-exporter.

SECTION 253. CERTAIN PESTICIDES

(Originally Introduced as H.R. 4372, H.R. 4374, and H.R. 4377 by Mr. Schulze)

The first provision of this section would suspend the column 1 rates of duty for dinocap and mixtures of dinocap with application adjuvants classified under items 408.16 and 408.38 of the Tariff Schedules of the United States (TSUS) until Dec. 31, 1990. The bill would amend subpart B of part 1 of the Appendix to the TSUS to add items 907.26 and 907.29 with free duty for articles from countries entitled to MFN treatment commencing on or after the 15th day of enactment and ending on or before Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

Dinocap is a fungicide-miticide used to control powdery mildew and mites, primarily on apples and other tree crops, vine crops, curcubits, and onamentals. It is imported as both the technical grade and as a finished product containing application adjuvants. There are U.S.-produced fungicides and other U.S.-produced miticides; however, there are few, if any, pesticides that are effective on both of these areas. In addition, use of dinocap-resistant strains as has occurred with other fungicides and miticides, according to statements from the producer.

Dinocap is presently classified under item 408.16, fungicides, not artificially mixed. Articles entered under this item number are presently dutiable at a column 1 rate of 11.5 percent ad valorem, a LDDC of 11.1 percent ad valorem, and a column 2 rate of 7 cents per pound plus 40 percent ad valorem. Effective July 1980, the present item number was established with concessions for a staged reduction in the column 1 rate to a final rate of 11.1 percent ad valorem as of January 1987.

Mixtures of dinocap with application adjuvants are currently classified under item 408.38, other pesticides. The column 1 rate and LDDC rate are currently 0.8 cents per pound plus 9.7 percent ad valorem, while the column 2 rate is 7 cents per pound plus 31 percent ad valorem. The column 1 rate was not subject to annual staged reductions as a result of the Trade Agreements Act of 1979.

Prior to the enactment of this Act, these products were classified in item 405.15, with a column 1 rate of 1.7 cents per pound plus 12.5 percent ad valorem. Articles classified in either item 408.61 or item 408.38 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

During 1981–84, dinocap and its preparations were produced in the United States by Rohm and Hass, at their plant in Philadelphia, Pennsylvania. In 1985, Rohm and Haas stopped production of dinocap, but continued to manufacture the preparations using imported material. The data, however, is not available because to do so would reveal business confidential material.

According to an industry source, U.S. imports of these products in 1985 amounted to approximately 276,000 pounds, valued at $1.2 million. All of these imports came from Italy and were shipped to Rohm and Haas. There were no imports from any other sources. The Commission staff was not able to identify any imports of these products during 1981–84 as these products were classified in "basket" TSUS item numbers.

Exact export data for these products are not available as they are classified in residual Schedule B item numbers.

Data for domestic consumption of these products are not available; however, an industry source indicated that domestic consumption in 1985 was nearly the same as imports.

Based on data provided by an industry source, the estimated annual revenue loss during 1986–90 would be approximately $10,000.

The second portion of section 253 would suspend the column 1 (MFN) duty on mixtures of 1,1-bis(4-chlorophenyl)-2,2,2,-trich-lor-oethanol (dicofol) and application adjuvants through Dec. 31, 1990. The column 2 (statutory) duty is not affected by the bill. The technical grade (active ingredient) dicofol already is subject to a duty suspension which expires Dec. 31, 1990. Continuation of that suspension is covered by separate legislation.

Mixtures of dicofol and application adjuvants currently enter the United States under Tariff Schedules of the United States (TSUS) item 408.36 at a MFN duty of 0.9 cents per pound plus 9.7 percent ad valorem. This MFN duty will be reduced to 0.8 cents per pound plus 9.7 percent ad valorem on January 1, 1987, as a result of concessions made in the Tokyo Round of trade negotiations. Imports under TSUS item 408.36 are eligible for duty-free treatment under the U.S. Generalized System of Preferences.

Dicofol is not produced in the United States. It is imported both as a technical grade (active ingredient) and as mixtures of the technical grade and application adjuvants. Dicofol is a chlorinated hydrocarbon developed specifically as a broad spectrum miticide. There are no other uses. After entry into the United States, the technical grade and the mixtures are further processed or formulated to produce a variety of miticide products.

Because the subject products enter in a basket category, determination of the revenue effect is not possible. It is estimated that revenue foregone would be approximately $85,000 per year for the period 1986 through 1990.

The third portion of section 253 would suspend the column 1 (MFN) duty on mixtures of mancozeb, dinocap, stabilizer and application adjuvants through Dec. 31, 1990. Currently, imports of mancozeb/dinocap mixtures would enter under item 408.38 at an MFN duty of 0.8 cents per pounds plus 9.7 percent ad valorem. Imports under TSUS item 408.38 are eligible for duty-free treatment under the U.S. Generalzed System of Preferences.

There are no U.S. manufacturers of mancozeb/dinocap. These mixtures are produced in Europe, under patents which expire in 1991, by subsidiaries of a U.S. firm. There is no single product manufactured or sold in the United States that is a direct replacement for the mancozeb/dinocap mixtures marketed domesticically as Dirkar. There are no commercial end used for mancozeb/dinocap other than as an agricultural fungicide-miticide. Several products control one or more pests controlled by Dikar but no single product has as broad a control spectrum of fungi and mites.

The revenue impact is undetermined because the subject products enter in a basket category. It is estimated that revenue foregone would be approximately $300,000 per year for the period 1986 through 1990.

SECTION 254. CHOLESTYRAMINE RESIN USP

(Originally introduces as H.R. 4376 by Mr. Schulze)

Section 254 would temporarily suspend the column 1 rate of duty for cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP) classified in item 412.70 of the Tariff Schedules of the United States (TSUS). The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.30 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day of enactment and ending on or before December 31, 1990. The column 2 rate of duty would remain unchanged.

Cholestyramine resin is a synthetic, strongly basic, anion-exchange resin consisting of a copolymer of styrene and divinylbenzene with quaternary ammonium groups. According to an industry source, the resin is available in both the USP grade and "regular" grade. The latter has a water content of 70 percent, compared with 12 percent for the USP grade. The resin is used medicinally as a cholesterol lowering agent and is marketed domestically by Mead Johnson under the brand name "Questran." The orally ingested resin, a white to buff-colored, fine hygroscopic powder, absorbs bile acids in the intestine, without being absorbed from the digestive tract. As bile acids are removed from the enterohepatic circulation, increased oxidaton of cholesterol to bile acids occurs.

Several patents are presently in effect that relate to the product as well as its applications. These patents are effective into the next century, according to an industry source. As of May 14, 1985, however, the patent on method-of-use expired. This was considered the main patent on the product since a patent on the polymer itself expired several years ago.

Rohm and Haas Company stated that there are no U.S. manufacturers of finely ground, polyvinylbenzyltrimethylammonium chloride, anion-exchange resins approved by the Food and Drug Administration (FDA) for use as antihyperlipoproteinemics. As such, the firm maintains that a tariff on this product is unnecessary.

Cholestyramine resin USP is presently classified under item 412.70. The duty rate for column 1 countries and for least developed developing countries (LDDC's) is 6.9 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 45 percent ad valorem. The item number has no concession for a staged reduction in duty rates. The resin is not eligible for duty-free treatment under the GSP; however, it is eligible for duty-free treatment under the Caribbean Basin Economic Recovery Act (CBERA) and under the United States-Israel Free Trade Area Implementation Act of 1985 indicated in the special column.

The market for hypolipidemics, agents used to reduce cholesterol and lipid levels in the blood, was valued at $60 million in 1984, an increase of 20 percent from 1983. Two of the hypolipidemics are anion-exchange resins. These resins are commonly called bile-acid sequestrants. One is cholestyramine resin USP and the other is colestipol hydrochloride, marketed under the brand name "Colestid Granules." The latter, although identical in end use to cholestyramine resin, has a different polymer structure. Of the approximately 2.4 million prescriptions for hypolipidemics written in 1984, "Questran" and "Colestid" accounted for 15 percent and 1 percent, respectively. "Questran" is expected to account for 25 percent of the projected $300 million market for hypolipidemics in 1990.

There is no significant medical difference between the two anion-exchange resin products. The preference in prescriptions was attributed to product loyalty, the length of time the product has been on the market, and the patient's tolerance of either product. Price is not considered a significant factor.

As the anion-exchange resin is classified in a residual (basket) TSUS item, the quantity or value of imports are not available. According to an industry source, however, there were no imports of this product prior to 1985. Approximately 250,000 pounds were imported in 1985, valued at $1–2 million. The industry source stated that projected total imports for 1986 will amount to 400,000–500,000 pounds, valued at $2–4 million. During 1987–90, imports are expected to amount to 550,000 pounds per year, valued at approximately $2–4 million per year. The current source of these imports is Italy, although the product is also available from France.

Data for domestic consumption are not available; however, industry sources indicate that domestic consumption in 1985 was estimated to amount to between 250,000 and 500,000 pounds, valued at $1–3 million.

Based on estimates from industry sources, annual revenue losses are expected to be approximately $190,000.

Estimated loss

Year:	*Thousands*
1987	190
1988	192
1989	195
1990	197

SECTION 255. 3-AMINO-3-METHYL-1-BUTYNE

(Originally introduced as H.R. 4375 by Mr. Schulze)

Section 255 would suspend the column 1 (MPF) duty on 3-amino-3-methyl-1-butyne through December 31, 1990. The column 2 duty is not affected by the bill. This chemical intermediate presently enters the United States under Tariff Schedules of the United States (TSUS) item 425.52 at a MFN duty of 7.9 percent ad valorem. Imports under this item are eligible for duty-free treatment under the U.S. Generalized System of Preferences.

There is no domestic production of this intermediate, and no directly competing product. 3-amino-3-methyl-1-butyne is employed as a chemical intermediate in the manufacture of pronamide, a herbicide used to control grass and weeds for selected crops. Pronamide is manufactured by a single U.S. firm which imports the intermediate from subsidiaries abroad.

The revenue impact is undetermined because the subject chemical enters in a basket category. It is estimated that revenue foregone would be approximately $50,000 per year for the period 1986 through 1990.

SECTION 256. MANEB, ZINEB, MANCOZEB, AND METIRAM

(Originally introduced as H.R. 4373 by Mr. Schulze)

This section, would suspend temporarily the column 1 rated of duty for mixtures of maneb, zineb, mancozeb, and metiram, under item 432.15 of the Tariff Schedules of the United States (TSUS). The bill would amend subpart B of part 1 of the Appendix to the TSUS to add item 907.60 with free entry for articles from countries entitled to MFN treatment commencing on or after the 15th day after the date of enactment and ending on or before Dec. 31, 1990. The column 2 rate of duty would remain unchanged.

The products covered include derivatives of ethylenebisdithiocarbamate (EBDE) registered for use as agricultural fungicides. These mixtures consist of active ingredients, related reaction products, and application adjuvants such as suspension agents, dispersants, inert liquid and/or solid diluents, thickeners, defoamers, solvents, stabilizers, colorants, water, and antifreeze. EBDC fungicides are used to control a wide spectrum of diseases on most agronomic crops including vegetables, fruits vine crops, field crops, ornamentals, nursery stock, and seed. There are no commercial end uses for these products other than as agricultural fungicides. Currently, there are a number of other fungicides produced in the United States; however, EDBC-based fungicides are usually the most cost-effective, broad-spectrum fungicides available to U.S. farmers. Target fungi have not developed resistance to these fungicides as has been the case with some newer systemic fungicides.

Mixtures of maneb, zineb, mancozeb, and metiram, are currently classified under item 432.15, mixtures of pesticides not specially provided for. Articles entered under this item number are presently dutiable at a column 1 rate of 3.9 percent ad valorem, but not less than the highest rate applicable to any component material, an LDDC rate of 3.7 ad valorem, but not less than the highest rate applicable to any component material, and a column 2 rate of 25 percent ad valorem, but not less than the highest rate applicable to any component material.

Articles classified in item 432.15 are eligible for duty-free treatment under the CBERA, the GSP, and the United States-Israel Free Trade Area Implementation Act of 1985.

Only one U.S. firm, Rohm and Haas Company in Philadelphia, Pennsylvania, produced the specified EBDC derivatives within the United States during the past five years. Production of these chemicals in the United States by Rohm and Haas was discontinued in 1985.

Data on U.S. production of these products are not available because to do so would reveal business confidential material.

Exact import data on these products are not available as they are classified in a "basket" item number. However, since Rohm and Haas was the only U.S. importer of these products during 1980–85, their import data reflect trade in these products. A company spokesman said that imports were 1.6 million pounds in 1981, 2.6 million pounds in 1984, and 6.7 million pounds in 1985. Rhom and Haas did not import these products during 1982 and 1983.

U.S. export data for these products are not available as they are classified in a residual (basket) schedule B item number. However, according to Rohm and Haas, exports of these products ranged from approximately 2.4 million pounds in 1981 to 2.7 million pounds in 1985. There were no exports of these products in 1980.

Data on the domestic consumption of these products are not available.

Based on estimates from industry sources, $1,000,000 is the estimated annual revenue losses during 1987–89.

SECTION 257. NICOTINE RESINS

(An amendment offered by Mr. Duncan)

The trade and Tariff Act of 1984 provided for a temporary duty suspension for nicotine resin complex in the form of chewing gum pieces. The intent of the provision was to allow duty-free entry of a trademarket substance know as *Nicorette,* imported by merrell Dow Pharmaceuticals, Inc.

Subsequent classification interpretations by the Customs Service since the duty suspension was enacted have negated the intent to provide duty-free treatment for *Nicorette.* This amendment clarifies the definition of nicotine resin complex so as to include "measured doses in chewing gum form (provided for in item 438.02, part 3B, Schedule 4). Thus, *Nicorette* would be covered by this duty-free classification as originally intended by Congress.

This amendment has been reviewed by the Customs Services and International Trade Commission, who have reported that there are no problems with this language. It is basically a technical change.

The second part of this amendment extends the current duty suspension from December 31, 1987 to December 31, 1990. The patent on this item applies through 1992, so the extension of this suspension would not negatively impact any manufacturer.

SECTION 258. HOSIERY KNITTING NEEDLES

(An amendment offered by Mr. Duncan)

This amendment creates a temporary duty suspension (TSUS item 912.12) for needles for knitting machines other than latch needles and spring-beard needles (TSUS item 670.62). This amendment is actually an enlargement of the scope of Section 259, Subsection (11) which covers double headed latch needles. Both the Department of Commerce and the International Trade Commission have investigated this change and found that there is no longer domestic production of the needles covered in 670.62.

SECTION 259. EXTENSION OF CERTAIN EXISTING SUSPENSIONS

SECTION 259, SUBSECTION (1). MIXTURES OF HOT RED PEPPERS AND SALT

(Originally introduced as H.R. 3867 by Ms. Boggs)

This section extends the duty suspension for certain mixtures of hot red peppers and salt from June 30, 1985 through December 31, 1990. The duty on such imports was previously suspended from October 24, 1978, through June 30, 1981 and reinstated from July 1, 1981, through June 30, 1985. The only known U.S. importer of pepper mash imports this product from Central and South America.

Mixtures of mashed or macerated hot red peppers and salt, currently provided for in TSUS items 141.77 and 141.98, are often referred to as "pepper mash" and are used in the production of hot red pepper sauce. Pepper mash is made by crushing any of several varieties of hot, red peppers and preserving the resulting pulp in salt, usually an 8 percent salt solution, in wooden kegs. The varieties of peppers commonly used in this process include cayenne, tabasco, serrano, and chili. The end product, hot red pepper sauce or "Louisianna hot sauce," is made by adding vinegar to this perserved mixture of macerated peppers and salt.

The mixtures of hot red peppers and salt which are the subject of this legislation are provided for in items 141.77 and 141.98 with column 1 rates of duty of 12 percent and 17.5 percent ad valorem, respectively, and a column 2 rate of duty of 35 percent ad valorem. The column 1 rates were not changed as a result of the Tokyo Round of the Multilateral Trade Negotiations.

The domestic hot sauce industry is comprised of approximately six firms, mostly in Louisiana, which produce hot red pepper sauces from pepper mash, and at least another 30 hot sauce makers scattered around the United States that use ingredients other than hot red peppers. The ingredients used by these other firms usually consist of jalapeno peppers (a hot, green pepper) or an oleo-resin (a synthetic) and tomato sauce mix, and are generally used to make taco or enchilada sauces for Mexican-style foods.

Both taco and enchilada sauces are somewhat competitive with the hot red pepper sauces, especially those lower-priced red pepper sauces made from non-tabasco peppers. Pure tabasco sauce is a higher priced sauce and, according to those firms processing it, a higher quality sauce. The McIlhenny Company produces only tabasco sauce and probably accounts for the bulk of the U.S. production of this article, but it is not known what share of U.S. production of hot sauces is accounted for by that company.

The growers of hot red peppers are concentrated in Louisiana, Mississippi, and Texas. Approximately 4,000 acres are devoted to the production of such peppers in these States. Most of these growers do grow some specialty crops as well as hot peppers.

Data on U.S. production of pepper mash or hot sauces are not available, but it is believed that such production is trending upward. The production of hot sauces is not seasonal but the production of pepper mash, the major ingredient of hot red pepper sauce, follows the seasonal pattern of the hot red pepper harvest during the summer and fall months.

The only known imports of pepper mash in recent years have been of the tabasco pepper variety for the account of the McIlhenny Company. Colombia and Honduras together account for almost two-thirds of McIlhenny's imports; the suppliers from Mexico constitute less than one-fifth. U.S. imports from Colombia and Honduras are entitled to duty-free treatment under the GSP.

According to domestic industry sources, there have been no exports of pepper mash in recent years; however, a significant amount of the U.S. output of hot sauces is shipped abroad. Precise figures are not available, but an estimated 30–40 percent of U.S. production is sold in foreign markets. Japan and Europe are the principal markets for the higher-priced hot sauces and the Middle East is a leading outlet for the lower-priced products.

Consumption of hot sauce in the United States is believed to be in long-term uptrend of (1) the evolution of American taste toward spicier foods in general, and (2) the increased consumption of Mexican-style food specifically.

The column 1 rate of duty on imports of mashed or macerated hot red peppers has been suspended for most of the period since late 1978; thus, there would be no substantial change (loss) in revenue. The estimated loss in revenue would have been $12,000 in 1985.

SECTION 259, SUBSECTION (2). CANTALOUPES

(Originally introduced as H.R. 2075 by Mr. de la Garza)

The proposed legislation would extend the suspension of duty on fresh cantaloupes entered during January 1 through May 15 from May 15, 1985 through December 31, 1990.

Cantaloupes, the most important melon types marketed in the United States, are generally used fresh as an appetizer, snack, or dessert, or may be cut into pieces for use in fresh fruit salads. Fresh cantaloupes are nonstorable and generally maintain their quality for only several weeks after harvest. This caharacteristic makes the marketing of cantaloupes seasonal.

This legislation would impose no duties imposed on imported cantaloupe during the period when domestic production is nil.

Cantaloupes are imported with a column 1 rate of duty of 20 percent between August 1 and September 15 and 35 percent the rest of the year. The column 1 rate is 35 percent year round. Cantaloupes entered between August 1 and September 15 are eligible for GSP although Mexican cantaloupe imports exceed the "competitive need" limits. All cantaloupe is eligible for CBERA duty free treatment.

Domestic production increased from 1.2 billion pounds in 1980 to 1.5 billion pounds in 1984. Production during January 1, to May 15 is believed to account for about 5 percent of annual U.S. production.

The cantaloupe harvest is highly seasonal. While the shipping season normally begins in late April or early May for cantaloupes produced in Arizona, California, and Texas, the bulk of domestic shipments are made from June through August.

Cantaloupes are produced commercially in at least 25 states, with more than 90 percent of the crop harvested in California, Texas, and Arizona. Cantaloupes require a long growing season and are susceptable to a number of diseases that limit the areas where they can be grown.

During 1980-84, total U.S. imports of cantaloupes rose irregularly from 170 million pounds in 1980 to 247 million pounds, in 1984. Data are not separately reported for the period January 1-May 15. However, imports during January 1-May 30 increased from 162.3 million pounds in 1980 to 228.7 million pounds in 1984. On a quantity basis, 88 percent of the cantaloupes imported into the United States during 1980-84 entered during the period January-May. Mexico is by far the leading source of imported cantaloupes, supplying 89 percent of the total annual imports in 1984. Mexico was ineligible for GSP benefits due to its predominant share of total imports.

In recent years, over 100 firms imported fresh cantaloupes, with 25 of them accounting for the bulk of such imports in 1984. The large volume firms are located in the southwestern United States.

During 1980-84, U.S. exports of cantaloupes averaged 52.1 million pounds annually; exports amounted to 46.9 million pounds in 1984. Canada is the principal market for U.S. export of cantaloupes, accounting for 98 percent of total U.S. cantaloupe exports in 1980-84. Exports during the first 5 months of 1980-84 were equivalent to about 10 percent of total exports in each of those years.

During 1980-84, apparent U.S. consumption of fresh cantaloupes rose steadily and averaged about 1.5 billion pounds annually. The ratio of imports to consumption averaged 12 percent throughout the period. About 70 percent of consumption during January-May, roughly the period covered by the proposed legislation, was supplied by imports.

Assuming 1984 import levels, revenue loss would be about $9 million.

SECTION 259, SUBSECTION (3). CERTAIN WOOLS

(Orginally introduced as H.R. 1696 by Mr. Frenzel)

This section extends suspension of coarse wools (defined as finer than 44s but no finer than 46s) from June 6, 1985 through December 31, 1990. Column 2 rates of duty would be those prescribed by items 306.30 through 306.34.

The system most commonly used in the United States to grade wool is referred to as the count system, which classifies wool numerically according to fineness. Under the count system, mid to upper 60s, 70s, and 80s are fine; low 50s to low 60s are medium; and 30s to high 40s are coarse.

Wool fibers finer than 44s but not finer than 46s are coarse and virtually all domestic consumption of such wool is imported. It is largely used to produce blankets and to a lesser extent fabrics for coats, carpets, and home furnishings.

Wools finer than 44s but not finer than 46s have been eligible for duty-free treatment under temporary tariff provisions since November 8, 1977.

U.S. imports of wools finer than 44s but not finer than 46s had been granted a temporary duty suspension (along with other types of wools) from November 8, 1977 to June 30, 1985. Effective July 1, 1985 the rates of duty as negotiated in the Tokyo round of the Multilateral Trade Negotiations became effective.

Imports of wools covered by this legislation are not subject to control under the Multifiber Arrangement (MFA), nor are they eligible for duty free treatment under the Generalized System of Preferences (GSP). Additionally, U.S. imports of such wool from least developed developing countries (LDDCs) are not eligible for preferential duty rates, but they are subject to duty free treatment under the CBERA.

There is no domestic production of this wools.

Imports of the subject wools increased from 6,227,000 pounds in 1980 to 16,747,000 pounds in 1984. More than 80 percent of the total quantity and value of the subject wools was shipped from New Zealand.

Apparent U.S. consumption is equal to level of imports.

If duties on the coarse wools covered by the legislation had been in effect in 1984, revenues would have amounted to 1.7 million.

SECTION 259 (4). NEEDLECRAFT DISPLAY MODELS

(Originally introduced as H.R. 2972 by Mr. Gibbons)

The proposed legislation would extend temporary duty-free treatment through December 31, 1990 to imports from countries entitled to most-favored-nation (MFN) status of needlecraft display models, primarily hand stitched, or completed mass-produced kits. The proposed legislation would be retroactive to June 30, 1985.

Needlecraft display models are finished replicas of the articles that can be made from needlecraft kits, which a consumer may purchase at retail. The domestic manufacturers of needlecraft kits export the kits principally to Haiti, for completion and then import the stitched or worked articles for sale to retailers. The models are used as displays in retail stores to stimulate consumer interest and to promote sales of unfinished kits. In addition, the models allow the consumer to assess the difficulty of the stitching in light of his or her ability.

The models (and kits) represent a variety of articles, including pictures, decorative pillow covers, latch hook rugs, Christmas ornaments and stockings, wall hangings, tablecloths, napkins, and purses. The majority of the models are believed to consist of pillow covers, wall hangings, and Christmas ornaments of needlepoint, crewel embroidery, or counter cross-stitch.

According to industry sources, cost considerations largely preclude the manufacture of models from kits in the United States.

U.S. imports of the subject needlecraft display models from column 1 countries were free of duty from January 27, 1983 to June 30, 1985, when temporary TSUS items 906.10 and 906.12 expired. The MFN rates of duty otherwise applicable to such articles vary from approximately 7 percent ad valorem to 25 percent ad valorem.

There are no MFA quotas on these kits. Only 3 of the 23 articles covered by this legislation are eligible for GSP or CBERA.

U.S. production and exports of needlecraft kit models for commercial sale are believed to be negligible. However, some small retailers specializing in needlecrafts have models stitched by their employees during work hours or by persons working in their homes. Compensation for the home workers may be in the form of either monetary payment or the return of the articles after their use for display purposes.

There is no commercial production of the completed display models in the United States because such production is labor intensive and, therefore, costly. Industry sources estimate that about 80 percent of the models are stitched in Haiti, primarily because of its available labor force, low wage rate (about $0.70 per hour), and proximity to the United States.

The National Needlework Association (TNNA) estimates that about one-half of its 425 member firms in the United States manufacture needlecraft kits. These producers vary from small firms specializing in only one type of needlework, such as crewel, cross-stitch, or needlepoint kits, to larger firms which produce a variety of needlecraft articles. Five producers together account for roughly three-fourths of U.S. production of needlecraft kits.

Several kit producers report that they sell their completed models to retailers at a loss of almost 20 percent, in anticipation that the models will increase kits sales. Some producers require retailers to purchase a minimum number of kits of a given design before the model can be purchased. However, the smaller producers are often unable to offer models to retailers because of the expense of having the models stitched and carrying them in inventory.

U.S. imports of needlecraft display models are not separately reported since imports of articles covered by TSUS items 906.10 and 906.12 are statistically reported under the 23 Schedule 3 provisions enumerated therein. However, TNNA estimates that the value of imports of these models amounts to $5 million to $10 million annually. About 5 firms account for 75 to 85 percent of the imports.

All but a small number of the imported models are made from U.S.-produced materials (e.g., yarn, fabric, matting, and thread). The models are stitched abroad and are then imported into the United States where framing or other finishing is completed.

Since data on the specific types of needlecraft kit models being imported are unavailable, it is impossible to provide a precise estimate of the potential revenue impact of this legislation; many different MFN rates of duty would apply to such articles, since 23 TUS items are involved. However, on the basis of an estimated value of imports of these models of between $5 million and $10 million annually, the legislation would be likely to result in a loss of customs revenues of approximately $830,000 to $1.7 million in 1985. This range would likely decline from $790,000 to $1.6 million in 1988, as a result of scheduled staged reductions of the applicable duty rates.

SECTION 259, SUBSECTION (5). TRIPHENYL PHOSPHATE

(Originally introduced as H.R. 2300 by Gephardt)

This section would extend the temporary column 1 suspension of duty for TSUS item 409.34. The extension would be effective from September 30, 1985 through December 31, 1990.

Triphenyl phosphate (TPP) is a colorless, odorless crystaline powder used principally as a fire-retarding agent and as a plasticizer for cellulose acetate and nitrocellulose used in the manufacture of photographic and other films. TPP functions to reduce the flammability of these films, as well as increasing the flexibility, making them safer and easier to handle. More than 75 percent of all TPP produced is used in these applications.

The market for the major end-uses for TPP, nitrocellulose films and cellulose acetate, has been declining for several years. Domestic manufacturers of TPP have virtually abandoned production of the product. Since imports of TPP supply most, if not all, domestic open-market demand, U.S. importers contend it would make sense to remove any impediment to access to the only remaining source of supply.

TPP has a column 1 rate of duty of 0.5 cent per pound plus 17.7 percent ad valorem. The rate for LDDC's is 0.1 cent per pound plus 17.7 percent ad valorem. The column 2 duty rate is 7 cents per pound plus 57 percent ad valorem. Imports may be eligible for duty-free treatment under GSP and CBERA.

Separate production data are not available for TPP. However, industry representatives estimate that total domestic production during 1980-84 was substantially less than 10 million pounds annually.

Monsanto Company, St. Louis, Mo., and Eastman Kodak Company, Rochester, N.Y., were the only producers of TPP in 1981. Monsanto permanently ceased production of TPP in 1981. Borg-Warner Corp., Morgantown, W. Va., and FMC, Nitro, W. Va., also have the ability to produce TPP, but neither have reported production of this product during 1980–84 and both indicate that they have no immediate interest in this market. It is estimated by industry observers that most of Eastman Kodak's production is consumed captively in its photographic film manufacturing operations. U.S. open-market demand for TPP is likely to be satisfied principally by imports in the future.

Separate import statistics on TPP were not available prior to 1984 when TPP was broken out as a statistical classification in item 409.3425. Imports of TPP in 1984 amounted to about 1.1 million pounds, valued at $764,000. The United Kingdom supplied 82 percent of total U.S. imports of TPP in 1984, while the Netherlands and South Korea each supplied about 8 percent.

In 1984, the only year for which import data are available, the calculated revenue lost as a result of the current duty suspension legislation amounted to $198,354. Since the U.S. market for TPP is a declining market, substantial increases in imports are unlikely and total revenue losses as a result of this legislation are not expected to exceed $110,000 per year in the near future.

SECTION 259, SUBSECTION (6). SULFAPYRIDINE

(Originally introduced as H.R. 2228 by Mr. Evans of Iowa)

This section would extend the existing suspension of the column 1 duty rate for sulfapyridine (TSUS 411.27) through December 31, 1990 and would be effective for entries made after December 31, 1985.

Sulfapyridine, is classified in a group of chemicals known as anti-infective sulfonamides.

At one time sulfonamides were widely used in the treatment of infections. However, the development of resistance in formerly susceptible organisms has greatly limited the clinical usefulness of these drugs. In addition, substantial quantities have been used as growth promoters in animal feeds. Use of sulfapyridine in animal feeds, as approved by the FDA, accounts for about 15 to 30 percent of annual consumption. The remainder of annual consumption is used in the production of other sulfa drugs, particularly sulfasalazine and sulfadiazine.

Sulfapyridine is classified in TSUS item 411.27. The current column 1 duty rate is 16 percent ad valorem, the LDDC rate—11.6 percent ad valorem, and the column 2 rate is 7 cents per pound plus 128.5 percent ad valorem.

Imports are not eligible for duty-free treatment under GSP but are eligible for CBERA.

Sulfapyridine is not presently produced in the United States. American Cyanamid Co. and Napp Chemicals Inc. produced sulfapyridine until 1980–81. Industry sources maintain that sulfapyridine cannot be substituted in the production of certain sulfa drugs, particularly sulfasalazine.

During 1980–1982 imports of sulfapyridine ranged from about 106,000 pounds to about 70,000 pounds. According to industry sources, in 1983, the first year of the suspension of duty on sulfapyridine, imports amounted to about 120,000 pounds. Imports increased to about 145,000 pounds in 1984. The current market price for sulfapyridine is approximately $11.40 to $12.30 per pound.

Export data are unavailable because sulfapyridine is classified in a residual (basket) Schedule B number.

According to industry sources, annual U.S. consumption of sulfapyridine amounts to about 120,000 to 160,000 pounds.

Revenue losses in 1986 are expected to be $247,000 and are expected to total $687,000 for the period 1986–1988.

SECTION 259, SUBSECTION (7) SYNTHETIC RUTILE

(Originally introduced as H.R. 3468 by Mr. Jenkins)

This section would suspend until December 31, 1990, the column 1 duties on synthetic rutile, provided for in item 603.70 of the Tariff Schedules of the United States (TSUS), by amending item 911.25 in part 1B of the Appendix to the TSUS to show the new expiration date for the effective period. The column 2 rate of 30 percent remains unchanged. Duties on synthetic rutile were suspended almost continuously between October 26, 1974 and June 30, 1982, when the last suspension expired. The amendment would be effective with respect to articles entered, or withdrawn from warehouse for consumption 15 days after enactment.

Synthetic rutile is derived from ilmenite by chemically extracting iron and other impurities from the ilmenite. Ilmenite, an ore of titanium, contains about 55 percent titanium dioxide. The upgrading processes result in a product with a titanium dioxide content approaching that of natural rutile, also an ore of titanium, which contains about 96 percent titanium dioxide. Since natural rutile is much more costly then ilmenite, increasing quantities of ilmenite are being upgraded to produce synthetic rutile.

In 1984, almost 84 percent of rutile was used to make the titanium dioxide pigments essential to the production of paint, paper, rubber, and plastics. In 1984, U.S. production of these pigments amounted to 800,000 short tons.

Synthetic rutile is classified under TSUS item 603.70, a residual provision for other metal-bearing materials of a type commonly used for the extraction of metal or as a basis for the manufacture of chemical compounds. Current column 1 rate of duty is 5.3 percent ad valorem, staying to 5.0 percent in 1987.

Imports of synthetic rutile are eligible for preferential treatment under the Generalized System of Preferences (GSP) and are also eligible for duty-free treatment under the Caribbean Basic Economic Recovery Act (CBERA) and when imported from Israel. They also receive the preferential percent rate when imported from least-developed developing countries.

Kerr-McGee Chemical Corp., the only known U.S. producer of synthetic rutile, has produced this material at its plant in Mobile, Alabama since 1977. In 1978 and 1979, Kerr-McGee expanded the plant's capacity to 110,000 short tons per year. The firm intends to expand capacity by another 15 percent by 1989. Total employment at the Mobile plant is 125 people.

Over half of the Mobile plant's production is used to satisfy the raw material requirements for Kerr-McGee's titanium dioxide pigment plant in Hamilton, Mississippi. Production information is confidential, but output has expanded during the last two years.

Domestic consumption is approximately equal to U.S. production plus imports. Demand for synthetic rutile strengthened in 1984 and again in 1985 due to rising demand by the titanium dioxide industry.

Revenue loss based on 1984 imports of synthetic rutile, valued at $3.8 million, is estimated at approximately $224,790, based on 5.9 percent ad valorem duty.

SECTION 259, SUBSECTION (8) CERTAIN CLOCK RADIOS

(Originally introduced as H.R. 4298 by Mr. Vander Jagt)

The bill would extend the existing suspension of the column 1 rate of duty on certain clock radios by striking out "Dec. 31, 1986" in Tariff Schedules of the United States (TSUS) item 911.95 and inserting in lieu thereof "Dec. 31, 1990."

The clock radios which are the subject of this bill are those solid-state (tubeless) radio receivers which incorporate a clock or timing mechanism within the same housing (or casing), hereinafter referred to as "clock radios." These radios may operate from batteries or electric current and are principally for consumer use, in that they are designed principally to receive radio signals from the entertainment broadcast bands. However, such bands are not restricted; the radios may receive on other bands, such as weather, police or fire, and aviation.

The clock portion of the radio may simply display time or may also sound an audible alarm. However, in most clock radios, the clock also controls the radio function by turning the radio on or off at preset times or intervals. Many models also provide for the control of external electric devices such as coffee pots. Such radio timers may be used to start the morning coffee as well as wake the occupant.

If duties were currently not suspended two duty rates would apply to imported clock radios. The first duty rate is on the radio portion of the apparatus, while a different rate is applied to the clock or timer mechanism. Because of the terms of TSUS item 911.95, however, the subject radios are treated as an entirety for purposes of the duty suspension. If a clock radio incorporates an analog clock with movements, the clock portion is dutiable separately in accordance with headnote 5, part 2E of schedule 7 of the TSUS, which specifically provides for such constructive segregation.

Solid-state radio receivers (including those with solid-state timer mechanisms) are dutiable under TSUS item 685.14, covering entertainment broadcast band receivers not for motor-vehicle installation, at a column 1 rate of 6.6 percent ad valorem. This rate of duty is being reduced annually as a result of the recent Tokyo Round of the Multilateral Trade Negotiations. The final reduction will be achieved on January 1, 1987, and result in a duty of six percent ad valorem. The six-percent rate is currently applicable to imports of clock radios from least-developed developing countries (LDDC's). The column 2 rate of duty, applicable to Communist controlled or dominated nations listed in general headnote 3(d), is 35 percent ad valorem on the radio part of the clock radio.

Merchandise imported under item 685.14 is eligible for duty-free entry under the provisions of the Generalized System of Preferences (GSP). However, products of Hong Kong, Singapore, Taiwan, and the Republic of Korea are not currently eligible for GSP treatment because these countries have exceeded the "competitive need" limitations set forth in section 504 of the Trade Act of 1974.

Products of Israel classified in TSUS item 685.14 are dutiable at the rate of six percent ad valorem, which will be reduced in stages at a rate of free. Finally, products of designated Caribbean Basin Economy Recovery Act (CBERA) countries enter free of duty.

There is currently no known U.S. industry producing clock radios.

Total U.S. imports of clock radios increased from $108.7 million in 1981 to $196.9 million in 1984, before dropping to $178.5 million in 1985. In 1985, the largest foreign sources of clock radios were Hong Kong ($77.6 million) and Malaysia ($52.8 million). The unit value of U.S. imports fluctuated during 1981–85 but averaged $13.00 over the period.

Since there is no domestic production and no exports, U.S. imports represent 100 percent of apparent U.S. consumptions.

Estimates of lost customs revenues for 1986–89 from the proposed duty-free entry of the subject clock radios average $8,000,000 per year.

SECTION 259, SUBSECTION (9). MACHINES DESIGNED FOR HEAT-SET, STRETCH TEXTURING OF CONTINUOUS MAN-MADE FIBERS

(Originally introduced as H.R. 1849 by Mr. Broyhill)

This provision would extend the existing temporary duty-free treatment applied to column 1 imports of machines designed for heat-set, stretch texturing of continuous manmade fibers until December 31, 1990 and would be effective December 31, 1985.

Texturing is the process of crimping, imparting random loops, or otherwise modifying continuous filament yarn to increase cover, resilience, abrasion resistance, warmth, insulation, moisture absorption, or to provide a different surface texture. The stretch/heat-set machinery that would be affected by this proposed legislation uses a "false-twist" method for texturing.

The false-twist method involves stretching, twisting, heat-setting, and untwisting of the yarn. The result is a bulkier, more elastic yarn.

According to a 1978 survey, 94 percent of the texturing machinery in place at that time (measured in thousands of spindles) was of the false-twist type. Since 1978, nearly all of the machines using other methods (gear crimping, edge crimping, knit-de-knit, and stuffer box) have been replaced by false-twist machines.

Duty-free treatment under item 912.07 was originally granted principally because the U.S. Yarn industry was unable to locate a domestic company that manufactured machines designed for heat-set, stretch texturing of continuous manmade fibers.

Machines for stretch/heat-set texturing of continuous manmade fibers are provided for in TSUS item 670.06 with a column 1 rate of duty of 4.7 percent ad valorem and a column 2 rate of 40 percent. The machines are eligible for duty free treatment under GSP and CBERA.

During the period 1974–83 U.S. firms did not produce heat-set, stretch texturing machines for general consumption. Two domestic companies have begun production of these machines since 1984. Enterprise Machinery & Development Co., located in New Castle, Del., produces heat-set and air-jet machnies, and Thieler Corp. International (TCI of Gastonia, N.C. reportedly produces a range of heat-set texturing machinery. According to TCI officials, domestic sales of these products ranged between $1 and $2 million during 1984. Sales data for Enterprise Machinery & Development Co. are not available.

Data as to amount of imports are not specifically available as these items are entered in a category that includes other types of textile machines.

If this legislation were enacted the average annual customs revenue loss that would result would be approximately $2.6 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rates scheduled for 1985–90.

SECTION 259, SUBSECTION (10). HOSIERY KNITTING MACHINES

(Originally introduced as H.R. 1547 by Mr. Broyhill)

The proposed legislation to provide for an extension of the existing temporary duty suspension on imports from column 1 countries of single cylinder fine gauge hosiery knitting machines and of double cylinder jacquard hosiery knitting machines for knitting women's hosiery. The duty suspension, would be effective on September 30, 1985, and would continue through December 31, 1990.

Knitting is the process of producing fabric by forming loops of yarn and pulling each newly formed loop through one that has already been made. These operations are performed by hooked needles.

Circular and noncircular knitting machines are used to make hosiery, although the use of the latter type has virtually ceased in the United States.

Circular hosiery knitting machines may be subdivided into two major categories—namely, single cylinder and double cylinder. In turn, single cylinder machines may be classified as either fine or coarse gauge machines. Currently, only single cylinder coarse guage hosiery knitting machines are manufactured in the United States.

Double cylinder hosiery knitting machines are used to manufacture half-hose for men, women, and children. These machines are fitted with a distinctive double-headed latch needle which is transferred to one or the other of the superimposed cylinders as required, producing a more intricate pattern (including jacquard or three-color combinations) than single cylinder machines.

Single cylinder fine gauge hosiery knitting machines have a column 1 duty of 4.9 percent ad valorem and double cylinder jacquard hosiery machines a 5.8 percent duty. Both have a column 2 rate of 40 percent ad valorem and are eligible for GSP and CBERA.

There are no U.S. producers of the hosiery knitting machines covered by this legislation.

Separate data for different types of circular hosiery knitting and double cylinder jacquard machines are not available. However, imports of the TSUS item covering all circular knitting machines were almost totally from Italy (90%). Canada was the sole source of the TSUS item covering the latter category.

The effect on revenue is not available because volumes of imports are not specifically known. Estimated revenue loss for these items in 1986 would be $980,000.

SECTION 259, SUBSECTION (11). DOUBLE-HEADED LATCH NEEDLES

(Originally introduced as H.R. 2166 by Mr. Broyhill)

This legislation would extend the existing temporary duty suspension for double-headed latch needles from column 1 countries, from June 10, 1985 to December 31, 1990.

Double-headed latch needles, or "links" needles, are used in the manufacture of machine-knitted fabric. These needles each consist of a shank with a hook at each end.

The manufacturing process for needles generally includes a series of up to thirty hand and machine operations, including pressing, swaging, tempering, polishing, and straightening. The duty free treatment is sought as there is currently no domestic production.

Double-headed latch needles are classified in TSUS item 670.58 as latch needles for knitting machines. The column 1 rate of duty is 16 cents per thousand plus 11.7 percent ad valorem and the column 2 rate is $2.00 per 1,000 plus 60 percent ad valorem. These needles are eligible for GSP and such imports totaled $2.7 million in 1984. These needles are also eligible for CBERA.

There has been no U.S. production of latch needles since 1980, when the Torrington Co. divested itself of its needle operations.

Imports increased from 128 million units in 1980 to 161 million units in 1984. West Germany and Japan accounted for 69 percent of U.S. imports.

The average annual customs revenue loss that would result from the continuation of the duty suspension as to imported double-headed latch needles would be approximately $2.2 million. This estimate is based on 1984 import levels and on the staged reductions of the tariff rates schedules for 1985–90.

SECTION 259, SUBSECTION (12). STUFFED DOLLS, CERTAIN TOY FIGURES AND THE SKINS THEREOF

(Originally introduced as H.R. 2238 by Mrs. Schneider)

The proposed legislation would be effective on December 31, 1985 and would extend to December 31, 1990 the temporary duty suspension afforded to imports of stuffed dolls with or without clothing, skins for stuffed dolls, stuffed or filled toy figures of inanimate objects and skins for toy figures.

Stuffed dolls are representations of human beings and have a textile exterior filled with a stuffing material, such as shredded textile fabric. These dolls, generally known as rag dolls in the toy trade, are either one-piece entirely stuffed dolls or dolls having a stuffed body with a hard head and extremities, usually of plastic.

Stuffed doll production is highly labor intensive; pieces must be hand-cut and sewn to produce the doll skin.

Stuffed or filled toy figures of inanimate objects either have predominantly nonhuman or nonearthlike features or are hybrids of more than one earthly creature. Stuffed or filled toy animals (earthly creatures) are excluded from this category. Stuffed or filled toy figures of inanimate objects can range from small inexpensive curiosities to larger-than-life-size creatures and characters costing many hundreds of dollars.

As with stuffed dolls, there is little domestic production of stuffed or filled toy figures of inanimate objects. Had these toys become popular a decade ago, a residual domestic industry might have produced them profitably in the larger size ranges (as is the case with stuffed animals), despite migration of other production to lower-wage countries. However, since inanimate figures have become popular only within the last several years, and remain concentrated in the smaller and medium size ranges, they have been sourced almost exclusively from abroad.

Doll and toy skins are the outer covering of a doll or toy or the unstuffed torso (basically the unstuffed doll or toy). In addition, a doll or toy having the arms, legs, or any incidental appendages filled or stuffed and the main portion of the body (the torso) unfilled would be considered a skin for Customs purposes.

The production of skins is highly labor intensive, requiring hand cutting and sewing. There is no known commercial production in this country of doll skins, negligible production of skins for toy figures of inanimate objects, and only minor production of skins for toy figures of animate objects (which is concentrated in skins for the largest toys).

Industry sources maintain that the production of these products is so highly labor intensive that the U.S. toy industry had resorted to sourcing almost exclusively from foreign production facilities. Thus, any duty is arguably an unnecessary addition to the final cost to the consumer. In addition, these sources assert that the duty suspension of imports of skins would encourage importers and manufacturers to finish the dolls and toys in the United States.

The subject articles are dutiable at rates ranging from 9.6 percent ad valorem to 13.4 percent ad valorem. All are eligible for duty free treatment under CBERA and GSP. Although products of Hong Kong, Taiwan and ROK are excepted in a few cases.

U.S. production of stuffed dolls increased from $4.8 million in 1980 to $44.9 millon in 1984. Stuffed or filled toy figures of inanimate objects increased from less than $1.0 million in 1980 to $2.0 million in 1984. Doll skin production was nonexistent and toy skin production was less than $1.0 million throughout the period.

Specific information concerning the domestic industry producing only the subject products is not available. However, there were approximately 200 U.S. firms producing all dolls and stuffed toys in 1984. Employment in the doll and stuffed toy industry, which prior to 1982 had been declining, had recovered somewhat in 1984 to about 7,800 employees, including about 6,600 production and related workers. The industry is concentrated in New York, New Jersey, New England, and California.

The twenty largest firms account for the bulk of domestic doll and stuffed toy production.

Nearly all domestic products, including all the major firms, import to some extent; their activities range from the importation of skins to significant investment in foreign production facilities for supplying both U.S. and foreign markets. There is no known U.S. production of skins for stuffed dolls, and very little production of any of the remaining products except skins of stuffed toy animals. Some U.S. manufacturers produce skins domestically for the largest stuffed toy animals or the very high priced smaller animals as part of their overall U.S. production of the completed animals. More often, however, the skins are imported. It is not uncommon for those producers importing parts of finished stuffed dolls and toy animals to export the production equipment, particularly cutting and sewing machines, to their overseas facilities.

Imports of all categories covered by this legislation increased markedly in the period 1980–1984. Units imported increased from 1980 to 1984 as shown below:

Item	1980	1984
Stuffed dolls	10.9 M	79.6 M
Stuffed toys	N/A	7.5 M
Doll skins	N/A	7.5 M
Toy skins	N/A	37.3 M

The import share from GSP and CBERA countries was 78% for dolls and nearly 100% for the rest.

U.S. exports of these products is negligible.

U.S. consumption increased 1980–1984 as shown below. (value in millions of dollars)

Item	1980	1984
Stuffed dolls	17.9	261.1
Stuffed toys	less than 1	8–10
Doll skins	N/A	7.5
Toy skins	N/A	38.3

Assuming that imports of stuffed dolls from Hong Kong and Taiwan and of toy figures of inanimate objects and toy skins from Korea remain ineligible for duty-free treatment under the GSP during 1986–90, the enactment of the legislation would result in an estimated loss of customs revenues of $15 million to $20 million annually.

SECTION 259, SUBSECTION (13) UMBRELLA FRAMES

(Originally introduced as H.R. 1417 by Ms. Kaptur)

This provision would continue the existing temporary suspension of MFN duties on frames for hand-held umbrella, chiefly used for protection against rain, by changing the termination date from December 31, 1986, to December 31, 1989.

Umbrella frames and parts, which are not produced in the United States, were imported primarily from Taiwan and entered the United States duty-free under the provisions of the Generalized

System of Preferences (GSP). When Taiwan lost GSP eligibility on March 30, 1984, under the so-called "competitive need" limitations, the applicable rate of duty became the column 1 rate, since reduced to 12 percent ad valorem.

Umbrella frames and skeletons of metal are classified in Tariff Schedules of the United States (TSUS) item 751.20, covering metal parts of umbrellas, walking sticks, canes, and other articles. The duty suspension, under item 912.45 in the Appendix to the TSUS, covers umbrella frames in one of the two statistical reporting numbers for umbrella frames and skeletons which is item 751.2005 for frames for hand-held umbrellas chiefly used for protection against rain (TSUSA item 751.2015 provides for all other frames and skeletons).

Articles classified in TSUS item 751.20 are eligible for duty-free entry under the provisions of the GSP. Taiwan, the principal supplier of these products, lost GSP eligibility effective March 30, 1984. The current column 1 rate of duty under TSUS item 751.20 is 12 percent ad valorem; no further reductions are scheduled. These articles are eligible for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA) if imported from beneficiary countries.

There is no domestic production of the type of umbrella frames covered by this legislation.

Imports of frames for hand-held rain umbrellas increased, in terms of both quantity and value, during the period 1980–84. In terms of quantity, imports increased from approximately 1.2 million units to nearly 1.4 million units; in value, imports increased from an estimated $779,000 to $3.8 million. In 1984, Taiwan supplied 97 percent of total imports, distantly followed by Thailand.

The ratio of imports to consumption was approximately 100 percent for all years considered, both in terms of quantity and value.

Based on estimated 1984 imports of these articles of $3.8 million, the continued suspension of the duty of 12 percent ad valorem would result in annual loss of U.S. customs revenues of approximately $456,000.

SECTION 259, SUBSECTION (14). CRUDE FEATHERS AND DOWN

(Originally introduced as H.R. 4255 by Mr. Jenkins)

This section would extend the existing suspension of duty on crude feathers and down to December 31, 1990.

TUSU item 903.70 and 903.80 (and the corresponding schedule 1 item—186.15) cover feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed.

The feathers and downs which are the subject of this legislation are provided for in item 186.15, with a column 1 rate of duty of 7.5 percent ad valorem and a column 2 rate of duty of 20 percent ad valorem. The column 1 rate is not scheduled for further reduction.

The current rates under the "Special" rates of duty are free for imports of feathers and downs from developing countries under the Generalized System of Preferences, from countries provided for under the Caribbean Basin Economic Recovery Act and from Israel.

The suspension was enacted in 1975 to correct an anomaly in the TSUS in that certain feather- and down-filled garments were dutiable at seven percent ad valorem while feathers and downs, the principal input, were dutiable at 15 percent ad valorem.

Almost all domestically produced feathers and downs are obtained as a by-product of raising chickens, turkeys, ducks, and geese for meat. U.S. poultrymen, except those raising ducks and geese, give relatively little consideration to the price of feathers and downs in determining the size of their flocks, as the price for chicken and turkey feathers is quite low. At current price levels, the sale of waterfowl feathers and downs appears to provide a significant source of income for domestic duck and goose producers. The bulk of chicken feathers are collected at broiler-processing plants in the Southeast; most of the waterfowl feathers and downs are collected at duck-processing plants on Long Island, N.Y. and at goose-processing plants in the Midwest. A small quantity of feathers and downs is salvaged annually from wild pheasants and ducks.

U.S. production of feathers and downs affected by this legislation is estimated to have been about 15 million pounds annually in recent years. The bulk of such production is of chicken feathers. The total also includes an estimated three million to five million pounds of waterfowl feathers and downs; the bulk of which is from ducks, with U.S. production of goose feathers and downs estimated at less than 0.5 million pounds annually. A small amount of feathers from pheasants is produced. At the prices of different types of feathers and downs vary greatly, no value can be reasonably estimated for domestic production.

U.S. imports of feathers and downs decreased from 17 million pounds, valued at $74 million, in 1981 to 11 million pounds, valued at $51 million, in 1982 then rose to 19 million pounds, valued at $77 million, in 1984. Such imports declined slightly to 18 million pounds, valued at $65 million, in 1985. Virtually all U.S. imports consist of waterfowl feathers and downs which are largely imported in the unprocessed and crude state. Most are baled and shipped in the unprocessed state because if feathers and downs are baled after being cleaned they must be reprocessed to regain their bulk, thus adding an additional expense.

China, during 1981–85, generally was the leading U.S. supplier of feathers and downs in terms of quantity. Such imports consisted mainly of uncleaned feathers.

France generally was the leading U.S. supplier of feathers and downs in terms of value during 1981–85. Such imports from France consisted mainly of downs.

U.S. exports of feathers and downs declined during 1981–85, from six million pounds, valued at $47 million, in 1981 to three million pounds, valued at $23 million, in 1985. Taiwan was the principal U.S. export market for feathers and downs in terms of quantity, accounting for about 26 percent of the total during 1981–85. Other major U.S. export markets during this period in terms of quantity included Korea (21 percent) and Canada (11 percent). Korea was the principal U.S. export market for feathers and downs in terms of value accounting for about 45 percent of the total. Other major export markets in terms of value included Japan (22 percent) and Canada and Taiwan (nine percent each).

No information is available on U.S. exporters of feathers and downs; however, it is believed that importers and processors also export when world market conditions are favorable.

During 1981–85, apparent U.S. consumption increased, rising from 26 million pounds in 1981 to 31 million pounds in 1984. Apparent U.S. consumption dropped slightly to 30 million pounds in 1985.

Based on the current rates of duty on crude feathers and downs and on the 1985 level of imports, the estimated annual loss of revenue would be approximately $5 million.

Subtitle D—Other Customs and Effective Date Provisions

SECTION 261. GSP TREATMENT OF WATCHES

(Originally introduced as H.R. 2028 by Mr. Anthony)

In this provision, watches would remain ineligible for GSP except those watches which, if given preferential treatment, would not cause material injury to the watch manufacturing and assembly operations in the U.S. and U.S. insular possessions. Because the data necessary to develop this criteria are not publicly available, the determination of which watches fit this criteria would be made by the U.S. Trade Representative after studying the matters and taking into account public views.

Material injury, as used in this context, means substantial or significant injury to the watch manufacturing and assembly industry in the United States or the insular possessions.

Watches, as defined in headnote 2(a) to schedule 7, part 2E of the TSUS, are timepieces suitable for wearing or carrying on or about the person. While viewed primarily as functional articles, many watches are fashion items and are sometimes considered articles of jewelry.

Conventional watches use a balance wheel and hairspring as a time base, and may or may not be battery operated. Nonconventional watches use a quartz crystal as a time base and are energized by a battery or solar cells.

Solid state electronic watches are classified under TSUS item 688.36. Other watches (conventional and electromechanical) are classified under TSUS item 715.05.

Item 688.36 has a column 1 duty rate of 4.3 percent ad valorem, and column 2 rate of 35 percent ad valorem and qualifies for duty free entry under CBERA unless they contain products from column 2 countries.

Item 715.05 has a column 1 duty rate equal to the sum of the column 1 duty rates of the watch case and the movement. The column 2 rate is the sum of the applicable column 2 rates. The same CBERA criteria apply as for 688.36 items.

Watches classifiable under 715.05 produced or manufactured in an insular possession of the United States are eligible for duty-free entry if they conform to the quota and other requirements of headnote 6 to schedule 7 which details a rather complex program of preferences enacted in 1982, designed to assist the watch industry in the U.S. Virgin Islands.

When the Trade Act of 1974 was passed, the U.S. watch industry was considered import-sensitive. Therefore, watches were excluded from the list of articles eligible for the GSP.

Estimated shipments of watches by U.S. producers, in terms of value, decreased from $483 million in 1980 to $268 million in 1984, or by 45 percent.

Since the late 1970's the domestic watch industry has, for the most part, moved production offshore to areas (primarily the Far East) with lower labor costs. There is some manufacturing of watches and watch movements in the U.S. insular possessions. However, the value of this production is negligible when compared with apparent consumption. Domestic watch manufacturing consists primarily of assembling components produced abroad. Procedures performed include attaching dials and hands to movement assemblies, encasing movements, regulating, packaging, and marketing.

Domestic employment data are unavailable, although industry sources estimate current employment at 3,000 to 4,000 people. Workers in the actual manufacturing process are largely semi-skilled and non-skilled.

There are an estimated 150 companies performing assembly operations. The largest 5 companies account for an estimated 80 to 90 percent of production. Although the majority of watch producers are located in the New York area, the remaining companies are located in approximately 15 states.

U.S. imports of watches almost tripled in terms of quantity from 50 million units in 1980 to 140 million units in 1984. In terms of value, watch imports increased from $613 million in 1980 to $845 million in 1984.

The leading supplier of watches in terms of value in 1984 was Japan, accounting for $324 million, or 38 percent of the total. In terms of quantity, the leader was Hong Kong with 101 million units, or 72 percent of the total.

U.S. exports of watches increased from 920,000 units, valued at $18 million, in 1980 to 1 million units, valued at $20 million, in 1981. Since then, exports have steadily dropped to 437,000 units, valued at $7 million, in 1984. Hong Kong is the leading market for U.S. watches. Canada and Venezuela are the second and third leading markets, respectively.

U.S. consumption has been relatively flat in the period from 1980 to 1984 averaging approximately $1,100 million.

The effect on revenue is unknown at this time.

SECTION 262. MARKING OF CONTAINERS OF IMPORTED MUSHROOMS

(Originally introduced as H.R. 839 by Mr. Schulze)

This section would provide that imported preserved mushrooms would not be in compliance with the marking provisions of section 304 of the Tariff Act of 1930 unless the containers indicate in English the country in which the mushrooms were grown. This legislation would not amend any existing statute or affect any existing rates of duty on imported articles.

In the United States, about two-fifths of the mushrooms consumed are fresh, and the remainder are processed. The great bulk of processed mushrooms are canned.

U.S. imports of canned mushrooms enter in all conventional containers sizes and styles of pack.

Since early 1981, entries of prepared or preserved mushrooms packed in a heavy salt solution in large containers (primarily 50 and 20- gallon plastic and 55- gallon steel drums) have been increasing. These are fresh mushrooms grown in the People's Republic of China (China) which have been cooked and then saturated with a heavy salt solution. Upon arrival in the United States, the mushrooms are washed and desalted before being subjected to conventional canning processes by domestic firms. Since 1980, the principal foreign suppliers of all canned mushrooms have been Taiwan, China, Hong Kong, and the Republic of Korea (Korea), with Spain and the Netherlands shipping significant amounts in 1984.

Preserved mushrooms are imported into the U.S. under 3 separate TSUS item numbers which have rates of duty ranging from 1.8 cent per pound plus 5.5% ad valorem to 3.2 cents per pound plus 10% ad valorem. The column 2 rates are all the same—10 cents per pound plus 45% ad valorem. Two of the items are eligible for GSP and all 3 are eligible for CBERA.

During 1980–84, annual U.S. sales of prepared or preserved (canned and frozen) mushrooms averaged 117 million pounds. In 1984, sales were 119 million pounds. In recent years, the leading states in production/sales of canned mushrooms included Pennsylvania, Indiana, and California, while Pennsylvania and Indiana led in frozen mushroom production/sales.

U.S. imports of prepared or preserved mushrooms increased 44 percent from 117.3 million pounds valued at $121.9 million, in 1980 to a record high of 169.1 million, valued at $165.7 million, in 1984.

The leading foreign suppliers of prepared or preserved mushrooms in 1984 (and the share supplied by each) were Taiwan (37 percent), China (27 percent) and Hong Kong (13 percent), Spain (9 percent), and South Korea (7 percent). In 1984, the bulk of imported prepared or preserved mushrooms were canned mushrooms.

U.S. exports of prepared or preserved mushrooms rose irregularly from 578,000 pounds, valued at $392,000, in 1980 to 634,000 pounds, valued at $453,999 in 1984. In 1984, the four major markets for canned mushrooms, accounting for the bulk of total exports, were Hong Kong, Saudi Arabia, Spain, and Canada.

During 1980–84, apparent U.S. consumption of prepared or preserved mushrooms trended upward and averaged 234 million pounds annually; in 1984, consumption amounted to 287 million pounds.

The enactment of this legislation would likely have little or no effect on the annual revenues collected on imports of prepared or preserved mushrooms, other than potential marking duties under section 304. Any increased cost of production in changing container labels to conform to this bill would be minimal, resulting in no increase in the dutiable value of the finished product or that being paid by U.S. processors of imports.

SECTION 263. CUSTOMS SERVICES AT PONTIAC/OAKLAND MICHIGAN, AIRPORT

(Originally introduced as H.R. 2381 by Mr. Carr)

This section amends Section 236 of the 1984 Trade and Tariff Act to specifiy that the airport located at Pontiac/Oakland, Michigan would become a reimbursable customs port. It would also eliminate the maximum number of locations that Customs may serve on a reimbursable basis.

The U.S. Customs Service discontinued its service in the early 1980's at a number of small airports as a cost-cutting measure. This move apparently disadvantaged some business interests that had come to rely upon the availability of a Customs operation at some of these locations. As a result of the pressure brought to bear by these interests, the Congress specified in the 1984 Trade and Tariff Act that the airport located at Lebanon, New Hampshire plus three non-designated other small airports (that would otherwise not qualify as a Customs location) could be provided with customs services on a reimbursable basis. Since enactment of that provision, Customs has had many requests for establishment of these locations.

The Committee recognizes that many small airports, such as Oakland/Pontiac Airport in Pontiac, Michigan and the airport located at Lebanon, New Hampshire, presently have neither the volume nor the level of business to require the availability of full-time customs services. Therefore, the Committee urges the Secretary of the Treasury to provide customs services at the Oakland/Pontiac Airport and charge a fee based on actual hourly costs, equal to expenses incurred.

SECTION 264. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE

This amendment is in response to this Committee's desire, expressed during tax reform deliberations, to develop a rule which would not only encourage imports of fuel alcohols from CBI countries and U.S. insular possessions but also encourage meaningful economic investment in these regions by discouraging "pass-through" operations.

This section permits duty-free importation of anhydrous alcohol from CBI countries and U.S. insular possessions to continue only if one of two conditions exists. First, if the alcohol has been both fermented and dehydrated within an insular possession or beneficiary country, it may be imported duty free. Secondly, if it is only dehydrated in an insular possession or beneficiary country, it must include hydrous ethyl alcohol which is wholly the product of manufacture of any insular possession or beneficiary country having a value not less than a prescribed percentage of the value of the ethyl alcohol or mixture, which is to be phased in over a period of 5 years. The Committee believes that this amendment will discourage "pass through" operations while allowing for a smooth transition to increased economic activity in the Caribbean relating to the production of ethanol. It is hoped that the provision will create strong incentive to encourage greater utilization of existing excess sugar in the region as feedstock for the production of ethanol. As amended, the percentages are 10% if entered during calendar year 1987, 20% during 1988, 30% during 1989, 50% during 1990, and 65% after December 31, 1990.

In fairness to companies that have made significant economic investment in reliance on existing customs rulings, the section contains two grandfather clauses. The first one sets an annual cap of 20 million gallons during 1987 and 1988 for anhydrous alcohol produced in an azeotropic distillation facility which was in operation on January 1, 1986. The other grandfather clause excepts for one year a facility meeting certain requirements and located in the U.S. Virgin Islands.

The proposed legislation is also designed to close a loophole which allows enthanol imported as a mixture with gasoline to be entered without paying the additional duty imposed under item 901.50. The provision also is intended to prevent importers from avoiding the additional duty by claiming that imported ethanol is for industrial purpooses. Under the current law, importers may enter the product without paying the 60 cents per gallon duty, and then take up to 3 years to redeclare its use and pay the duty, if in fact it is used for fuel purposes.

Section 264 clarifies the definition of ethyl alcohol in tariff item 901.50 to include mixtures containing ethyl alcohol which are suitable for use as a fuel or in producing a fuel.

The section adds a new headnote 2 to subpart A of part 1 of the Appendix to the Tariff Schedule which defines the term "suitable for any such uses" to exclude ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is being imported for uses other than fuel use or use in producing fuel mixtures. The exclusion applies only to ethyl alcohol that currently is classified under item 427.88, and does not apply to mixtures that contain ethyl alcohol but are classified in other categories. This headnote 2 exclusion is required to prevent the possibility that the "suitable for any such uses" language would be construed to include ethyl alcohol that is not imported for fuel-related uses, especially ethyl alcohol that is imported for industrial uses. At the same time, headnote 2 does not affect the inclusion under the item 901.50 definition of ethyl alcohol mixtures that are suitable for fuel uses.

The headnote specifies a procedure to be followed both when importers certify use under the item 901.50, and when importers certify use to qualify for the use exemption in headnote 2. The importer must certify at the time of entry that the importation is for uses other than fuel use or use in producing fuel-related mixtures. No deposit of the 901.50 duty need be made, and the Commissioner of Customs shall not liquidate the entry. If evidence of actual use for purposes other than fuel use or use in producing fuel mixtures, satisfactory to the Commissioner, is presented within a reasonable period of time not less than 18 months from the date of entry, then the entry shall be liquidated without payment of the duty provided in item 901.50. If satisfactory evidence is not presented within the reasonable time period, or if the ethyl alcohol or ethyl alcohol mixture is diverted to fuel use, then the duty provided for in item 901.50 shall become payable retroactive to the date of entry.

It is the intent of the Committee that the Commissioner and the Director of the Bureau of Alcohol, Tobacco and Firearms shall, to the extent practicable and consistent with the protection of the revenue, develop coordinated, nonduplicative recordkeeping requirements regarding the actual end use of imported ethyl alcohol.

Under current law, ethyl alcohol for nonbeverage purposes is classified under TSUS item 427.88. The column 1 rate of duty is 3 percent ad valorem and the column 2 rate is 20 percent ad valorem. Imports under item 427.88 are not eligible for duty-free treatment under the Generalized System of Preferences (GSP). However, imports from beneficiary Caribbean countries may be eligible for duty-free treatment under the CBERA.

Ethyl alcohol that is imported to be used in producing a mixture of gasoline and alcohol or a mixture of a special fuel and alcohol for use as fuel, or to be used otherwise as a fuel, is subject to a temporary (through December 31, 1992) additional duty of 60 cents per gallon under the provisions of TSUS item 901.50. This additional duty is imposed on both column 1 and column 2 imports.

Ethyl alcohol, also referred to as ethanol, is a clear, flammable liquid. It usually contains some water that is not distilled from the commercial product. The two commercial grades are absolute ethyl alcohol, which is 100 percent pure, and 190 proof ethyl alcohol, which is 95 percent ethyl alcohol and 5 percent water and other impurities.

Ethyl alcohol is produced commercially in the United States using both synthetic and fermentation processes. The fermentation process generally used in the United States involves hydrolyzing corn starch and then fermenting the resulting sugars.

The primary uses of ethyl alcohol are: as a raw material in the production of other chemicals such as acetic acid, ethyl acetate, and acetaldehyde; as a solvent; and as an additive in gasoline.

U.S. production of completely denatured alcohol increased 360 percent from 1981 to 1982 and by 60 percent from 1982 to 1983.

There are approximately 145 domestic fuel ethanol plants, with an aggregate annual capacity of 840 million gallons of ethanol. The employment level for the fuel alcohol industry is estimated to be about 6,600 production workers.

Official statistics of the U.S. Department of Commerce show that U.S. imports of fuel-grade ethanol from all sources increased rapidly during 1982–84, from 13.5 million gallons in 1982 to 55.3 million gallons in 1983, and to 74.0 million gallons in 1984. Virtually all such imports were from Brazil.

There are no U.S. exports of ethanol.

Apparent U.S. consumption of fuel-grade ethanol increased 330 percent from 1981 to 1982 and 95 percent from 1982 to 1983. The increases in apparent U.S. consumption of fuel-grade ethanol during 1982–84 reflects growth in the new gasohol market for this product.

Based on 1984 data, the revenue under item 427.88 and 901.50 was $46.1 million. The actual revenue would probably decline since enactment of the proposed legislation is expected to reduce U.S. imports of fuel-grade ethyl alcohol.

SECTION 265. CUSTOMS BOND CANCELLATION STANDARDS

(An amendment offered by Mr. Crane)

This section establishes a requirement for the Secretary of the Treasury to publish guidelines establishing standards for setting terms and conditions for the cancellation of bonds.

SECTION 266. THE W.M. KECK OBSERVATORY PROJECT, MAUNA KEA, HAWAII

(Originally introduced as H.R. 4254 by Mr. Heftel)

Section 264 would allow certain specified articles to be imported duty free for use in the construction of an optical telescope for the W.M. Keck Observatory Project in Mauna Kea, Hawaii. These articles would include the telescope structure, or frame, the observatory domes, and the primary mirror blanks.

The bill would not eliminate or change the current Tariff Schedules of the United States (TSUS) rates of duty under which the articles would otherwise enter. Instead, it would grant a special exemption from the applicable tariff rates for the articles specified above. The exemption would apply to the Keck Observatory Project only.

The bill further provides for the refund of any duty that may have been paid on any of the specified articles before enactment of the proposed law.

The Keck Observatory will house a ten-meter reflecting telescope with infrared capabilities that will be the most powerful optical telescope in the world. The telescope will consist primarily of an observatory dome, primary mirror blanks, and telescope structure.

The observatory dome will be a 120-feet diameter steel, hemispherical structure. Such domes typically enclose telescopes; therefore, they also contain moving shutter doors which permit the telescope to view the sky. Domes are generally built in sections. Structural steel shapes are cut into various configurations, attached to steel trusses, and welded together.

The mirror blanks are made of a special "zero expansion" ceramic material. Although the material is not glass, it has both glass-like and crystalline properties. It has such low thermal expansion rates over a wide temperature range that precision parts made of it are not subject to changes resulting from alternations in temperature. It is therefore an ideal mirror substrate mount for astronomical and infrared telescopes because changes in the reflector caused by temperature fluctuations would impair the quality of observations. Because of the difficulty of using a ten-meter mirror blank, the designers of the Keck telescope have developed mosaic of 36 hexagonal mirror segments only 1.8 meters in diameter.

The telescope structure is a high precision space frame which supports the primary mirror and provides ultra-precise movement to point the optical system to selected areas in the sky.

The Keck telescope will have a resolution three times that of any other telescope in the world. It will be used to view distant galaxies and will be able to collect enough light from them to determine their red-shifts, a measure of astronomical distance. Other uses include direct imaging in thermal infrared; thermal infrared spectroscopy; wide field imaging at optical and infrared wavelengths, spectroscopy and polarimetry of single objects and other experiments to discover the origin of stars, planets, and galaxies.

The steel observatory domes would be classified under TSUS item 653.00, which pertains to certain fabricated products of iron or steel such as hangars, buildings, other structures, and parts of structures.

Currently, the column 1 rate of duty is 6.2 percent, which is the seventh stage of the duty reduction negotiated during the MTN. In the final staged reduction, effective January 1, 1987, the duty will be reduced to 5.7 percent ad valorem. The column 2 rate under item 653.00 is 45 percent ad valorem, and the LDDC rate is 5.7 percent ad valorem.

The articles covered under item 653.00 are currently eligible for duty-free treatment under the GSP (for all countries except the Republic of Korea), the Caribbean Basin Economic Recovery Act, and the U.S.-Israel Free Trade Area Act.

The telescope structure or frame and primary lens blanks are both classified under item 708.65 (frames, mountings, and parts of telescopes) and are dutiable at the rate applicable to the article of which the frames and mountings are part. In this case, it would be the rate applicable to item 708.61 (telescopes designed for use with infrared light).

Currently, the column 1 rate of duty is 2.6 percent. In the final staged reduction, effective January 1, 1987, the duty will be reduced to 2.2 percent ad valorem. The column 2 rate under item 708.61 is 35 percent ad valorem, and the LDDC rate is 2.2 percent ad valorem.

The articles covered under item 708.61 are currently eligible for duty-free treatment under the GSP, the CBERA, and the U.S.-Israel Free Trade Area Act.

Enactment of this legislation would result in a loss of customs revenues of about $610,000, based on the 1986 rates of duty under TSUS items 653.00 and 708.65 applied to the articles specified in the bill.

SECTION 267. RELIEF OF RUKERT MARINE CORPORATION OF BALTIMORE, MARYLAND

(Originally introduced as H.R. 3628 by Ms. Mikulski)

Section 265 provides that certain entries of synthetic methionine from Japan made between March 26, 1976, and March 10, 1977, shall be reliquidated without liability of the importer of record for antidumping duties, and that any such duty, if paid, shall be refunded. These duties were assessed by the Customs Service as a result of its determination under the antidumping law in effect at the time that synthetic methionine from Japan had been sold in the united States at less than its fair value, with a dumping margin of 44.14 percent ad valorem. Pursuant to the Customs Service determination, the Department of Commerce, which assumed responsibility for antidumping matters on January 1, 1980, issued an order for the assessment of the duties. Because the Rukert

Marine Corporation was the importer of record for the merchandise, it became liable for payment of the additional duties.

The Rukert Marine Corporation ("Rukert") sought exemption from the collection of these duties because the corporation, whch acted as the customs broker for entries of the merchandise, did not receive actual notice of its potential liability for the antidumping duties until after the period had expired during which it could have avoided liability by substituting the name of the actual consignee of the merchandise.

The assessed amount of antidumping duties is approximately $258,000.

SECTION 268. RELIEF OF MINEMET, INC., NEW YORK

(Originally introduced as H.R. 2506 by Mr. Lent)

The proposed legislation would instruct the Secretary of the Treasury to reliquidate, as free of duty under item 911.12 of the Appendix to the Tariff Schedules of the United States (TSUS) (in effect at the time of entry), four entries of tubular tin products imported through the port of New York in March 1979. This would enable Minemet, Inc., to obtain the duties previously paid by submitting a certificate of actual use (in this instance a remelt certificate) for the products to the U.S. Customs Service, at the original port of entry, within 120 days from the date of enactment of this Act.

The Customs Service classified the subject products in TSUS 622.40, pipes and tubes and blanks therefor in tin. The column 1 rate the duty under this item in 1979 was 6 percent ad valorem, and the column 2 duty rate was 45 percent ad valorem; the current column 1 duty rate is 3.3 percent ad valorem. Imports under TSUS item 622.40 were then eligible for duty-free entry under the Generalized System of Preferences (GSP) if the product of a beneficiary country other than Brazil (as of March 1, 1979), while today all GSP-eligible countries may claim duty-free entry for such articles. The least developed developing countries (LDDC) duty rate, in effect since 1980, is 2.4 percent ad valorem. Such products from designated beneficiary countries are eligible, as of late 1983, for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA). Imports under TSUS item 622.02 have been unconditionally free of duty since its enactment.

Enactment of this bill would cause a customs revenue loss of $216,000. This figure represents the amount of duty that Minemet paid on the articles in question, which it would be able to recover.

SECTION 269. EFFECTIVE DATES

Section 269 provides that, in general, amendments made in this Title shall apply to articles entered, that is, withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

Exceptions are that Section 222, marking of watches and watch components, applies to articles entered on or after the 30th day after the date of the enactment of this Act; Section 239, certain knitwear fabricated in Guan applies to articles entered after October 31, 1985; Section 250, certain bicycle parts applies to articles entered after June 30, 1986; Section 259, subsection (8), certain clock radios and subsection (13) umbrella frames apply to articles entered after December 31, 1986; Section 257(2), Nicotine resin and Section 259, subsection (14), crude feathers and down apply to articles entered after December 31, 1987; and Section 263, customs service at Oakland/Pontiac, Michigan, airport as well as Section 264, ethyl alcohol, takes effect January 1, 1987.

Retroactive application is provided, upon proper request filed on or before the 90th day after the date of the enactment of this Act for amendments made by Section 214, carroted furskins; Section 231, color couplers and couplers intermediates; Section 238, Dicofol; Section 247, duty free entry for Pan American Games; Section 257, nicotine resins; and for extensions of duty suspensions which expire before enactment.

TITLE III. IMPLEMENTATION OF NAIROBI PROTOCOL

(Originally introduced as H.R. 2885 by Mr. Gibbons)

The proposed legislation would make permanent changes to the TSUS to implement the Nairobi Protocol to the earlier Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials. Such changes would become effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the latest of: 1) August 12, 1985; 2) the 15th day following the date of enactment; or 3) the 15th day following the deposit of the U.S. ratification of the Protocol. The Protocol's intent is to contribute to the cause of peace through a freer exchange of ideas and articles across national boundaries. To achieve this goal, duty-free treatment would be extended to various printed materials, visual and auditory materials, tools for certain scientific instruments, and articles for blind and handicapped persons. The Protocol added new articles to the group receiving duty-free treatment under the Agreement and is aimed at ending the restrictions on the type of importers eligible to obtain such benefits.

Subtitle A and B describe the purpose of the act and amends, repeals and creates tariff provisions for articles to be afforded duty free treatment pursuant to the act.

Subtitle C would permit the President to modify portions of the duty free treatment authorized under the act. First, section 321 would empower him to terminate or norrow, or impose conditions on, the duty-free treatment granted to the tools for scientific instruments and articles for the handicapped. This authority would be in addition to that afforded by section 201 of the Trade Act of 1974 but it would be available only where the duty-free treatment of a type of article has a "significant adverse impact" on all or part of a U.S. industry producing the like oir directly competitive article.

All actions to change the duty treatment of covered articles could occur only after public and private parties had an opportunity to present views. The section would further deem ongoing proceedings under the 1982 act, or any continuing action under it, to be proceedings or actions under the proposed section. (This includes the investigation on hearing aids.)

Section 322 would permit the President to expand the scope of the duty-free treatment of the visual and auditory material covered by section 313, within the interest of the United States. Such action could include the removal of or change in any conditions previously imposed as to those imports. The section is intended to permit the President to move from implementing the narrower Annex C–2 to the less restrictive Annex C–1; the latter lacks the limitations on the nature of articles and type of importers eligible to claim free entry that are present in C–2. Any such action would become effective on the fifteenth day after it is proclaimed.

Other sections of subtitle C would modify procedures to obtain duty free eligibility for scientific apparatus and would also provide for collection of statistical information for imports of articles for the handicapped to assist in the implementation of potential actions limiting duty free treatment under Section 321.

The Florence Agreement was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in July 1950 and entered into force as to ten countries on May 21, 1952. The Agreement provides for the exemption from customs duties of specified publications, other information materials, and objects of cultural and artistic interest in order to promote the free exchange of ideas. The Agreement entered into force as to the United States on November 3, 1966, upon issuance of Presidential Proclamation 3754; the duty-free treatment commenced on February 1, 1967.

The Nairobi Protocol, drafted between 1973 and 1976, was opened for signature on March 1, 1977 and represents both an extension of the Agreement to additional categories of articles and application of original provisions to new products. The Protocol has eight annexes, four of them mandatory for contracting parties, covering groups of articles to receive duty-free treatment. A fifth annex has two versions, one broader than the other; the proposed legislation would implement the narrower version.

Under the Protocol, a contractng party is obligated to exempt the following articles from customs duties and other charges:

(1) printed books; printed publications and documents of a non-commercial character (Annex A)

(2) works of art and collector's pieces of an educational, scientific, or cultural character (Annex B)

(3) scientific apparatus or instruments imported by approved public or private scientific or educational institutions, (Annex D)

(4) articles specially designed for the use or advancement of the blind or other physically or mentally handicapped persons, when the article is imported by approved institutions (Annex E)

Contracting parties also agree to extend such free entry to either of the following:

(1) visual and auditiory materials, including films (or negatives); sound recordings; patterns, models (except toy models), and wall charts of an educational, scientific, or cultural character; video-tapes; holograms; multi-media kits; and other materi-

als (Annex C.1—originally adopted by the United States through the 1982 act); or

(2) the same materials, when limited to those of an educational, scientific or cultural character imported by certain entities (Annex C.2—to be implemented by the proposed legislation with the potential of moving to Annex C.1 at the later date).

Parties may choose to grant free entry to sports equipment (Annex F), musical instruments and equipment (Annex G), or material and machines used for the production of books, publications, and documents (Annex H) under specified circumstances. The United States has not adopted these three annexes.

Restrictions on importation or subsequent circulation of these articles can be applied if directly based on national security, public order, or public moral considerations. In ratifying the Agreement, the United States was permitted to attach a reservation which allowed for the suspension of any obligation under the Agreement for those imported articles covered by the Agreement that prove injurious to domestic industry producing a like or directly competitive product.

The temporary tariff treatment afforded by the Protocol was provided in Proclamation 5021 of February 14, 1983 with an expiration of August 11, 1985.

In order to ascertain whether the domestic hearing aid industry has been harmed by the Protocol approved duty free importation of hearing aids the ITC instituted investigation No. 332–215 on June 11, 1985. Any modification of tariff treatment for hearing aids pursuant to the ITC findings and Presidential consideration would continue in effect after the enactment of Title III.

The existing column 1 tariff rates for those articles covered by the proposed legislation varies from free (this is the case for most of the articles) to 3.3 percent ad valorem. Approximately half of the articles are eligible for GSP and all of the articles (with the possible exception of some articles for the handicapped such as special watches) are eligible for CBERA. The temporary duty suspensions on these articles expired August 11, 1985.

In 1984, the value of shipments (receipts) by the commercial printing industry was estimated at $32 billion. Specific shipment data on catalogs, drawings and plans, and photographs and certain pictorial matter—the significant imported articles that would be given duty-free treatment—are not available. However, it is estimated that domestic receipts from catalogs, drawings, and plans account for approximately 5 percent of the annual value of receipts of the U.S. commercial printing industry.

U.S. production of motion-picture film cannot be accurately measured from the available statistical data. However, the manufacture of video products has expanded, mainly as a result of the increasing demand of video-taped films for use on home video systems.

Data are not available concerning the domestic production of tools specially designed to be used for the maintenance, checking, guaging or repair of instruments or apparatus for which no corresponding or alternative articles is manufactured in the United States. Such production is believed to be small.

Data are not separately available concerning the production of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons, since the range of products potentially included in that category is extensive.

Printers of catalogs, drawings and plans, and photographs and pictorial matter represent a relatively small portion of a substantial commercial printing industry. Commercial printing products are basically grouped into six major segments, each of which contains articles involved in the legislation. These six groupings are: magazines and periodicals; catalogs and directories; general job printing; advertising printing; labels; and legal work.

There were approximately 30,000 commercial printing establishments in 1984. Production employees accounted for 75 percent of all employment in the commercial printing establishments in 1984.

About two-thirds of all printing plants are located in the Eastern United States. About 20 percent of the plants are located west of the Rockies and on the Pacific Coast, and the remaining 15 percent are in the Central States. Domestic production accounts for the bulk of U.S. consumption, with imports making only a minor contribution.

Data are not reported concerning the number of establishments and employees in the motion picture industry.

Although there are many producers of the broad category of articles that are specially designed or adated for the use of benefit or physically or mentally handicapped persons, no data can be included concerning such firms. Similarly, no data are available concerning production of all the sound or combination recordings in proposed TSUS item 870.34.

U.S. imports of printed matter are relatively insignificant compared with domestic production. Imports of catalogs, drawings and plans, and photographs and certain pictorial matter were also only a small portion of domestic consumption of these products, with combined import valued at about $121 million in 1984. The leading source of imports of catalogs, drawings and plans in 1984 was Canada. Trade in printed matter occurs primarily because of unique content rather than for economic benefit.

The value of imports of exposed motion-picture film, related sound recordings, and recorded video tape for distribution in the United States is insignificant in relation to the value of domestic production and is much less than that of exports. Imports increased from $18.1 million in 1980 to $23.2 million in 1984. The supplier of imported films vary depending upon whether U.S. pictures are filmed on location (which is determined in part by the foreign exchange rate) and the box office success of foreign productions in the United States. Imports by nonprofit institutions cannot be specified.

Total U.S. imports of sound recordings under TSUS items 724.20 through 724.40 in 1980–1984 grew consistently from $50,907,000 to $155,981,000, averaging $87,297,000. The imports entered by approved institutions cannot be separately identified.

Imports of the various educational, scientific, and cultural articles provided for in TSUS item 870.30 averaged $10 million during 1980–84. The leading source in 1984 was Norway, which provided 56 percent of the total.

U.S. exports of catalogs, drawings and plans, and photographs and certain pictorial matter (exposed film) were valued at a combined total of $80.2 million in 1984, up from $45.3 million in 1980. The largest of these categories, drawings and plans increased from $11.6 million to $42.0 million between 1980 and 1984. The major export markets were Denmark and the United Kingdom. Exports of exposed film increased from $17.1 million in 1980 to $22.0 million in 1982; in 1984 such imports amounted to $19.0 million. The major export markets were Canada and the United Kingdom. Exports of catalogs increased from $16.6 million in 1980 to $19.2 million in 1984. The leading export markets were Canada, the United Kingdom and Australia.

The United States is the world's largest exporter of motion-picture films. There are approximately 75 countries to which the U.S. exports motion-picture films, the most important being the major industrialized nations, which account for an estimated 45 percent of total foreign remittances. The top 15 markets for U.S. film exports account for about 75 percent of remittances from foreign film rentals.

No statistics are available concerning exports of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons.

U.S. consumption of catalogs, drawings and plans, and photographs and other pictorial matter is basically supplied by domestic production. Annual consumption data are not available but are estimated to be almost equal to annual production, or about 5 percent of the annual value of receipts of the U.S. commercial printing industry.

U.S. consumption, as well as production, exports, and imports, of motion-picture films cannot be accurately measured because of the nature of the statistical data available.

No information is available concerning the apparent U.S. consumption of tools specially designed for the maintenance, checking, gauging, or repair of instruments or apparatus for which no corresponding or alternative article is manufactured in the United States. However, it is believed that imports supply most, if not all, of U.S. consumption, since the machines are also imported.

Data are not available regarding the consumption of articles specially designed or adapted for the use of benefit of the blind or other physicaly or mentally handicapped persons. It is believed, however, that U.S. made articles supply the bulk of consumption.

Revenue losses from the proposed changes to schedule 2, part 5 are likely to be minimal. Total annual customs revenues generated in 1984 to articles classified there were approximately $1.1 million. Revenue loses resulting from all other current TSUS items affected by the legislation would be insignificant, since many covered articles already enter duty-free or do not enter in significant volume.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee in reporting the bill. H.R. 4750 was ordered favorably reported by the Committee by a nonrecorded vote.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee has concluded, as a result of extensive hearings held by the Subcommittee on Trade and an in-depth review of the issues involved, that amendments to various trade laws and the addition of certain new legislation is necessary to address current forms of unfair trade practices for the reasons described above under the Background and Purpose of the bill.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in this bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4750 does not provide any new budget authority or any significant additional tax expenditures.

In compliance with clause 7(a) of rule XIII and clause 2(l)(3) (B) and (C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office of H.R. 4750 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 6, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4750, the Comprehensive Trade Policy Reform Act of 1986, as ordered reported by the House Committee on Ways and Means, May 1, 1986.

The bill includes provisions that would amend several sections of the Tariff Act of 1930 (P.L. 71-361), the Trade Act of 1974 (P.L. 93-618), and the Trade and Tariff Act of 1984 (P.L. 98-573) regarding unfair foreign trade practices and import relief; would grant the President additional authority to negotiate certain trade issues; and would clarify, suspend, or impose numerous tariffs and other related customs provisions. The estimated budgetary effects of the bill are shown in Table I.

TABLE I.—ESTIMATED BUDGETARY EFFECTS OF COMPREHENSIVE TRADE POLICY REFORM ACT OF 1986, AS ORDERED REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Total revenue effects	−70	−75	−77	−78	−16
Total outlay effects	([1])	([1])	([1])	([1])	([1])
Net deficit effect	−70	−75	−77	−78	−16

[1] CBO does not expect the activities required by the bill to result in significant additional costs to the Federal Government.

Chapter I, Subtitle A of Title I would amend section 301 of the Trade Act of 1974 regarding U.S. responses to certain unfair trade practices of foreign countries. The bill would transfer decision-making authority from the President to the United States Trade Representative (USTR) to determine if foreign trade practices are subject to section 301 criteria. If the USTR finds that a foreign country has violated a trade agreement, the President would be required to retaliate in an amount equal to the foreign restriction; the form of retaliation would be at his discretion.

Chapter II, Subtitle A of Title I includes all the provisions of H.R. 3131, the Telecommunications Trade Act of 1986, as reported by the Committee on Ways and Means, April 15, 1986. The act provides specific authority to the President and the USTR to address foreign barriers to competitive opportunities for U.S. firms in telecommunications markets. CBO's estimate of H.R. 3131, dated April 14, 1986, states that the act would not result in significant additional costs to the federal government. Because it is uncertain what measures may be taken as a result of H.R. 3131, it is not possible to estimate any potential revenue effects. The provisions of Chapter II are described in the enclosed copy of the CBO's cost estimate for H.R. 3131.

Chapter I, Subtitle B of Title I would amend section 201 of the Trade Reform Act of 1974 relating to International Trade Commission (ITC) investigations of serious injury to a domestic industry caused by import competition. The bill would allow establishment of an industry adjustment advisory group upon request of a petitioner to assess the problems facing the petitioner's industry and to propose a strategy for enhacing its international competitiveness. The findings of the advisory group, if adopted by the ITC, would be reported by the ITC to the USTR, who would be required by the bill to provide import relief. The USTR, however, would have the discretion to alter the form of import relief recommended by the ITC.

Chapter I of Subtitle B also provides for expedited consideration of petitions for trade adjustment assistance, and tightens the requirements under which the ITC considers dumping and subsidy practices of non-market economy countries.

Chapter II, Subtitle B of Title I changes in a variety of ways the requirements under which the ITC considers cases regarding countervailing and antidumping duties: it provides special factors for the ITC to assess in cases involving imported agricultural products and involving the threat of material injury; it clarifies the list of actionable domestic subsidies and the material injury standard as it applies to fungible goods; it expands the antidumping law to address diversionary dumping and provides new monitoring procedures for diversionary dumping; it allows parties injured by dumping to bring suit before the Court of International Trade. It extends our countervailing duty laws to include government subsidies of natural resource inputs, and includes details of determining when a subsidy exists and how to measure its magnitude.

Chapter III, Subtitle B of Title I includes provisions to provide fair access to foreign markets for products protected by U.S. intellectual property rights, to improve the effectiveness of protection of intellectual property rights, and to set forth principle objectives for negotiating trade agreements in this area.

Subtitle C of Title I sets forth extensive trade negotiating objectives and grants the President negotiating authority for specific trade agreements. Subtitle D clarifies and strengthens the function of the U.S. Trade Representative. Subtitle E includes miscellaneous trade law changes.

To the extent that an action taken by the President or the USTR would affect dutiable imports, it could cause an increase or decrease in customs duties collections. Because it is uncertain what measures would be taken in accordance with the provisions in Title I of this bill, CBO is unable to estimate any potential revenue effects of these provisions. CBO does not expect the other activities required by Title I of the bill to result in significant additional costs to the federal government.

Title II of the bill contains approximately 60 miscellaneous tariff and customs provisions that would clarify, suspend, or impose tariffs on specific products. Some of these provisions would decrease customs duties collections; others would increase collections; some would have no revenue effects at all. Based on information obtained from the ITC, CBO estimates that Title II will decrease revenues by roughly $70–80 million annually from 1987–1990 and by $16 million in 1991.

Title III of the bill would amend and implement the Nairobi Protocol regarding certain educational materials and tools for scientific instruments. CBO estimates that the budgetary effects of this title are insignificant.

Enactment of this bill would not affect the budgets of state or local governments.

With best wishes.

Sincerely,

ROSEMARY MARCUSS,
(for Rudolph G. Penner, Director).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 14, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3131, the Telecommunications Trade Act of 1986, as ordered reported by the House Committee on Ways and Means, April 9, 1986.

The bill would require the United States Trade Representative (USTR) to investigate and report to the Congress on foreign barriers to competitive opportunities for U.S. firms in telecommunications markets. Once the investigation is completed, within six months after enactment of the bill, the President would have until 18 months following enactment to negotiate trade agreements that meet the USTR's objectives for fair markets for telecommunications products and services. The bill also authorizes the President to request two one-year extensions of this negotiating period. If no agreements are obtained, the President would be required to implement retaliatory trade actions authorized by the bill. Further Congressional action, however, would be required for any actions the President takes against imports. The USTR would also be authorized to take actions to restore the balance of concessions between the United States and a foreign country.

To the extent that the response of the President or the USTR would affect dutiable imports of telecommunications products, it could cause an increase or decrease in customs duties collections. Because it is uncertain what measures would be taken, CBO is unable at this time to estimate the revenue effect of this bill. We do not expect the other activities required by the bill to result in significant additional costs to the federal government.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

With respect to clause (2)(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee states that H.R. 4750, which would have a very modest revenue loss, would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

SEC. 101. BASIC AUTHORITY FOR TRADE AGREEMENTS.

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby, the President—

(1) during the [5-year] *14-year* period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) *except as provided in subsection (d),* may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b)(1) Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) shall be made decreasing a rate of duty to a rate below 40 percent of the rate existing on January 1, [1975.] *1987.*

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, [1975,] *1987,* is not more than 5 percent ad valorem.

(c) No proclamation shall be made pursuant to subsection (a)(2) increasing any rate of duty to, or imposing a rate above, the higher of the following:

(1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on January 1, [1975.] *1987,* or

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, [1975.] *1987.*

(d)(1) The President may not proclaim, under the authority of this section, the reduction or elimination of any duty on any article that, on the date of the enactment of the Comprehensive Trade Policy Act of 1986, was not designated as an eligible article under title. V.

(2) For purposes of subsections (c), (d), (e), (f), and (g) of section 102 and section 151, any provision of a trade agreement entered into under subsection (a)(1) that reduces or eliminates a duty on any article to which paragraph (1) applies shall be treated as a trade agreemet entered into under secton 102.

SEC. 102. BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

(a) * * *

(b) (1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the [13] *14*-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

* * * * * * *

(5) In the implementation of any bilateral trade agreement entered into with a foreign country under paragraph (2)(A) or (4)(A), the Commissioner of Customs shall issue such rules and regulations as are necessary to prevent the transshipment through that country of articles subject to quantitative import restrictions under United States law.

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. [Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e).] *Such consultation shall include the nature of the agreement, how and to what extent the agreement will achieve the overall and principal United States negotiating objectives set forth in section 172 of the Comprehensive Trade Policy Reform Act of 1986, and all mattters relating to the implementation of the agreement under subsections (d) and (e).* If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

* * * * * * *

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) * * *

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) * * *

[(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and]

(B) a statement—

(i) that the agreement achieves overall and principal United States negotiating objectives set forth in section

172 of the Comprehensive Trade Policy Reform Act of 1986; and

(ii) of his reasons as to—

(I) how and to what extent the agreement achieves the negotiating objectives referred to in clause (i), and why and to what extent the agreement does not achieve other such negotiating objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

* * * * * * *

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President [may] *shall* recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agreement apply solely to the parties to such agreement, if such application is *appropriate and* consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

[(1) the term "barrier" includes—

[(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

[(B) any duty or other import restriction;]

(1) the term "barrier" includes any duty or import restriction;

* * * * * * *

SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) * * *

* * * * * * *

(d) ACCESS TO HIGH TECHNOLOGY.—

(1) IN GENERAL.—Principal United States negotiating objectives shall be to obtain the elimination or reduction of foreign barriers to, and foreign government acts, policies, or practices which limit, equitable access by United States persons to foreign-developed technology, including barriers, acts, policies, or practices which have the effect of—

(A) restricting the participation of United States persons in government-supported research and development projects;

(B) denying equitable access by United States persons to government-held patents;

(C) requiring the approval or agreement of government entities, or imposing other forms of government interven-

tion, as a condition for the granting of licenses to United States persons by foreign persons (except for approval or agreement which may be necessary for national security purposes to control the export of critical military technology); and

(D) otherwise denying equitable access by United States persons to foreign-developed technology or contributing to the inequitable flow of technology between the United States and its trading partners.

(2) DOMESTIC OBJECTIVES.—In pursuing the objectives described in paragraph (1), the United States shall take into account the policies of the United States Government in licensing or otherwise making available to foreign persons technology and other information developed by United States laboratories.

[(d)**]** *(e)* DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

SEC. 104B. NEGOTIATING OBJECTIVES WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS.

Principal United States negotiating objectives under section 102 shall be—

(1) to seek enactment and effective enforcement by foreign countries of laws which adequately recognize and protect intellectual property under copyrights, patents, trademarks, mask works and trade secrets; and

(2) to develop and strengthen bilateral and multilateral international rules and dispute settlement procedures against trade-distorting practices arising from inadequate national protection and enforcement of intellectual property rights, including—

(A) early adoption of the GATT Anti-Counterfeiting Code, and concurrent development in the GATT, in cooperation with international technical organizations such as the World Intellectual Property Organization (WIPO), of substantive norms and standards for the protection and enforcement of other forms of intellectual property, and

(B) the supplementing and strengthening of standards for protection and enforcement in existing international intellectual property conventions, including expansion to cover new and emerging technologies and elimination of discrimination or unreasonable exceptions or pre-conditions to protection.

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CHAPTER 2—OTHER AUTHORITY

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SEC. 123. COMPENSATION AUTHORITY.

[(a) Whenever any action has been taken under section 203 to increase or impose any duty or other import restriction, the President—

[(1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

[(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement.]

(a) Whenever any action taken under chapter 1 of title II or chapter 1 of title III, by statute, or through any tariff reclassification increases or imposes any duty or other import restriction, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(2) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or excise treatment, as he determines to be required or appropriate to carry out any such agreement;

but only if the entering into of any such agreement is necessary or appropriate to meet the international obligations of the United States.

(b)(1) * * *

*   *   *   *   *   *   *

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant import relief under section [203(h).] *207(a).*

*   *   *   *   *   *   *

SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.

(a) * * *

(b) While there is in effect with respect to any article any action taken under section [203] *205* of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

*   *   *   *   *   *   *

SEC. 129. NEGOTIATION OF CERTAIN MISCELLANEOUS TARIFF AGREEMENTS WITH THE GOVERNMENT OF CANADA.

(a) In order to facilitate negotiations with respect to a trade agreement with the Government of Canada authorized pursuant to subsection (b)(4) of section 102, the President may, subject to the provisions of subsections (b), (c), and (d) of this section—

(1) enter into tariff agreements relating to the items listed in this section; and

(2) may proclaim the modification or elimination of any existing duty on these items as he deems appropriate.

(b) The President shall exercise his authority under this section only with respect to articles provided for in the following items or other provisions of the Tariff Schedules of the United States (19 U.S.C. 1202):

(1) Frozen cranberries (provided for in item 146.71).

(2) Dialysis cyclers (provided for in item 709.17).

(3) Packaging goods for tea (provided for in headnote 2 to subpart A of part 11 of schedule 1).

(4) Dried fababeans (provided for in items 140.11 and 140.16).

(5) Cat litter (provided for in items 256.90 and 512.24).

(6) Mechanics tool boxes (provided for in item 706.62).

(7) Medical tubing (provided for in item 772.65).

(8) Synthetic fireplace materials (provided for in item 792.32).

(9) Spirits (provided for in items 169.21 and 169.22).

(10) Miners safety lamps, components, and battery chargers (provided for in items 683.80 and 682.60).

(11) Computerized paper cutter control retrofit units (provided for in items 685.90 and 676.15).

(c) The President shall exercise his authority to proclaim changes in existing duties under this section only to the extent that tariff concessions of approximately equivalent value are granted by the Government of Canada in exchange for reductions authorized under this section.

(d) The President may exercise the authority granted under this section only during the 5-year period beginning on the date of the enactment of this section.

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

*   *   *   *   *   *   *

SEC. 135. ADVICE FROM PRIVATE OR PUBLIC SECTOR.

(a) * * *

*   *   *   *   *   *   *

(e) The Advisory Committee for Trade Negotiations, each appropriate policy advisory committee, and each sector or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under this Act, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. *Each report, if it applies to a trade agreement entered into under section 102, shall be provided under the preceding sentence not later than the date on which the draft of the implementing bill for the agreement is submitted to Congress under section 102(e).* The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States *and achieves the overall and principal negotiating objectives set forth in section 172 of the Comprehensive Trade Policy Reform Act of 1986;* and the report of the appropriate sector or functional area committee shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or with the functional area.

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CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SEC. 141 OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

* * *

* * * * * * *

[(c)(1) The United States Trade Representative shall—

[(A) be the chief representative of the United States for each trade negotiation under this title or section 301;

[(B) report directly to the President and the Congress, and be responsible to the President and the Congress for the administration of trade agreements programs under this Act, the Trade Expansion Act of 1962, and section 350 of the Tariff Act of 1930;

[(C) advise the President and Congress with respect to nontariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

[(D) be responsible for making reports to Congress with respect to the matter set forth in subparagraphs (A) and (B);

[(E) be chairman of the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962; and

[(F) be responsible for such other functions as the President may direct.

[(2) The United States Trade Representative may—

[(A) delegate any of his functions, powers, and duties to such officers and employees of the office as he may designate; and

[(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

[(3) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under the Act and shall have such other functions as the United States Trade Representative may direct.]

(c)(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) service as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations in which the United States participates;

(D) issue policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such Committee in the performance of his functions.

* * * * * * *

(g) FAIR TRADE ADVOCATES BRANCH.—

(1) There is established in the Office a Fair Trade Advocates Branch (hereinafter referred to as the "Branch") which shall assist qualifying industries in obtaining remedies and benefits under the trade laws—

(A) by preparing and initiating cases (other than those which, in the opinion of the Branch, are frivolous) for qualifying industries under the trade laws;

(B) acting as an advocate in proceedings regarding such cases before the respective agencies responsible for administering the trade laws; and

(C) in pursuing administrative and judicial appeals, where appropriate, of such cases.

(2) For purposes of this subsection—

(A) The term "qualifying industry" means—

(i) any small business which, in the judgment of the Branch, due to its small size has neither the adequate internal resources nor the financial ability to obtain qualified legal or technical assistance;

(ii) any industry which, because of its competitive position or location in export markets would suffer serious adverse economic impact, including reprisals, if it pursued on its own a case under a trade law; or

(iii) any industry whose case, in the judgment of the Branch, is meritorious for policy or other reasons, and

the industry lacks adequate resources to obtain remedies against unfair trade practices.

A decision by the Branch regarding whether any industry is a qualifying industry under this subsection is not reviewable by any other agency or by any court.

(B) The term "trade law" means the following:

(i) Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties).

(ii) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

(3) Each agency responsible for administering a trade law shall provide technical and other assistance to the Branch to enable it to prepare and file petitions and applications to obtain the remedies and benefits that may be available under that law.

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CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

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SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.

(1) CONTENTS OF RESOLUTIONS.—

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on .", the blank space being filled with the appropriate date; **[**and**]**

(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: "That the ——— does not approve ——— transmitted to the Congress on ———.", with the first blank space being filled with the name of the resolving House, the second blank space being filled in accordance with paragraph (2), and the third blank space being filed with the appropriate date**[**.**]**; *and*

(C) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: 'That the Congress does not approve the reduction or waiver (under section 311A of the Trade Act of 1974) described in the document transmitted to Congress on .', the blank space being filled with the appropriate date.

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CHAPTER 8—BARRIERS TO MARKET ACCESS

"SEC. 181. ACTIONS CONCERNING BARRIERS TO MARKET ACCESS.

(a) * * *

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—On or before the date which is one year after the date of the enactment of the International Trade and Investment Act, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Finance of the Senate and to the Committee on Ways and Means *and the Committee on Foreign Affairs* of the House of Representatives. *Commencing with the analysis and estimate required to be submitted on or before October 30, 1986, the Trade Representative shall identify those acts, policies, and practices included in the analysis that had significant adverse impact on United States exports during the reporting period.*

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TITLE II-RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

[CHAPTER 1—IMPORT RELIEF

[SEC. 201. INVESTIGATION BY INTERNATIONAL TRADE COMMISSION.

[(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.[1] The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

[(2) Whenever a petition is filed under this subsection, the Commission shall transmit a copy thereof to the United States Trade Representative and the agencies directly concerned.

[(b)(1) Upon the request of the President or the United States Trade Representative upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

[(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

[(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry;

[(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

[(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers; and

[(D) the presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) shall not necessarily be dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

[(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

[(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only is domestic production,

[(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

[(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

[(4) For purposes of this section, the term "substantial cause" means a cause which is important and not less than any other cause.

[(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report of efforts made by firms and workers in the industry to compete more effectively with imports.

[(6) In the course of any proceeding under this subsection, the Commission shall investigate any factors which in its judgment may be contributing to increased imports of the article under investigation; and, whenever in the course of its investigation the Commission has reason to believe that the increased im ports are attributable in part to circumstances which come within the purview of substitles A and B of title VII or section 337 of the Tariff

Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

[(7) For purposes of this section, the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

[(c) In the course of any proceeding under subsection (b), the Commission shall, after reasonable notice, hold public hearings and shall afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

[(d)(1) The Commission shall report to the President its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

[(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or

[(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance,

and shall include such findings or recommendations in its report to the President. The Commission shall furnish to the President a transcript of the hearings and and briefs which were submitted in connection with each investigation.

[(2) The report of the Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as teh case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) shall cause a summary thereof to be published in the Federal Register.

[(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

[(f)(1) Any investigation by the Commission under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act) which is in progress immediately before such date of eanctment shall be continued under this section in the same manner as if the investigation had been instituted originally under the provisions of this section. For purposes of subsection (d)(2), the petition for any investigation to which the preceding sentence applies shall be treated as having been filed, or the request or resolution as having been received or the motion having been adopted, as the case may be, on the date of the enactment of this Act.

[(2) If, on the date of the enactment of this Act, the President has not taken any action with respect to any report of the Commission containing an affirmative determination resulting from an investigation under section 301(b) of the Trade Expansion Act of 1962 (as in effect before the date of the enactment of this Act), such report shall be treated by the President as a report received by him under this section on the date of the enactment of this Act.

[SEC. 202. PRESIDENTIAL ACTION AFTER INVESTIGATIONS.

[(a) After receiving a report from the Commission containing an affirmative finding under section 201(b) that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the President—

[(1)(A) shall provide import relief for such industry pursuant to section 203, unless he determines that provision of such relief is not in the national economic interest of the United States, and

[(B) shall evaluate the extent to which adjustment assistance has been made available (or can be made available) under chapters 2, 3, and 4 of this title to the workers and firms in such industry and to the communities in which such workers and firms are located, and, after such evaluation, may direct the Secretary of Labor and the Secretary of Commerce that expeditious consideration be given to the petitions for adjustment assistance; or

[(2) if the Commission, under section 201(d), recommends the provision of adjustment assistance, shall direct the Secretaries of Labor and Commerce as described in paragraph (1)(B).

[(b) Within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 201(b) (or a finding under section 201(b) which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period), the President shall—

[(1) determine what method and amount of import relief he will provide, or determine that the provision of such relief is not in the national economic interest of the United States, and whether he will direct expeditious consideration of adjustment assistance petitions, and publish in the Federal Register that he has made such determination; or

[(2) if such report recommends the provision of adjustment assistance, publish in the Federal Register his order to the Secretary of Labor and Secretary of Commerce for expeditious consideration of petitions.

[(c) In determining whether to provide import relief and what method and amount of import relief he will provide pursuant to section 203, the President shall take into account, in addition to such other considerations as he may deem relevant—

[(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

[(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapters 3 and 4;

[(3) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

[(4) the effect of import relief on consumers (including the price and availability of the imported article and the like or directly competitive article produced in the United States) and on competition in the domestic markets for such articles;

[(5) the effect of import relief on the international economic interests of the United States:

[(6) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may results from international obligations with respect to compensation;

[(7) the geographic concentration of imported products marketed in the United States;

[(8) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

[(9) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

[(d) The President may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 201(b) with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report.

[**SEC. 203. IMPORT RELIEF.**

[(a) If the President determines to provide import relief under section 202(a)(1), he shall, to the extent that and for such time (not to exceed 5 years) as he determines necessary taking into account the considerations specified in section 202(c) to prevent or remedy serious injury or the threat thereof to the industry in question and to facilitate the orderly adjustment to new competitive conditions by the industry in question—

[(1) proclaim an increase in, or imposition of, any duty on the article causing or threatening to cause serious injury to such industry;

[(2) proclaim a tariff-rate quota on such article;

[(3) proclaim a modification of, or imposition of, any quantitative restriction on the import into the United States of such article;

[(4) negotiate, conclude, and carry out orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such articles; or

[(5) take any combination of such actions.

[(b)(1) On the day the President determines under section 202 to provide import relief, including announcement of his intention to negotiate an orderly marketing agreement, the President shall transmit to Congress a document setting forth the action he is taking under this section. If the action taken by the President differs from the action recommended to him by the Commission under section 201(d)(1)(A), he shall state the reason for such difference.

[(2) On the day on which the President determines that the provision of import relief is not in the national economic interest of the United States, the President shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

[(3) On the day on which the President proclaims any import relief under this section not reported pursuant to paragraph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons thereor.

[(c)(1) If the President reports under subsection (b) that he is taking action which differs from the action recommended by the Commission under section 201(d)(1)(A), or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b) is transmitted to the Congress.

[(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the enactment of the joint resolution referred to in paragraph (1) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 201(d).

[(d)(1) No proclamation pursuant to subsection (a) or (c) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the proclamation.

[(2) Any quantitative restriction proclaimed pursuant to subsection (a) or (c) and any orderly marketing agreement negotiated pursuant to subsection (a) shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period which the President determines is representative of imports of such article.

[(e)(1) Import relief under this subsection shall be proclaimed and take effect within 15 days after the import relief determination date unless the President announces on such date his intention to negotiate one or more orderly marketing agreements under subsection (a) (4) or (5) in which case import relief shall be proclaimed and take effect within 90 days after the import relief determination date.

[(2) If the President provides import relief under subsection (a) (1), (2), (3), or (5), he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, such import relief.

[(3) If the President negotiates an orderly marketing agreement under subsection (a) (4) or (5) and such agreement does not continue to be effective, he may, consistent with the limitations contained in subsection (h), provide import relief under subsection (a).

[(4) For purposes of this subsection, the term "import relief determination date" means the date of the President's determination under section 202(b).

[(f)(1) For purposes of subsections (a) and (c), the suspension of item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article shall be treated as an increase in duty.

[(2) For purposes of subsections (a) and (c), the suspension of the designation of any article as an eligible article for purposes of title V shall be treated as an increase in duty.

[(3) No proclamation providing for a suspension referred to in paragraph (1) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the application of item 806.30 or item 807.00

[(4) No proclamation which provides solely for a suspension referred to in paragraph (2) with respect to any article shall be made under subsection (a) or (c) unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b), determines in the course of its investigation under section 201(b) that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the designation of the article as an eligible article for the purposes of title V.

[(g)(1) The President shall by regulations provide for the efficient and fair administration of any restriction proclaimed pursuant to this section.

[(2) In order to carry out an agreement concluded under subsection (a)(4), (a)(5), (e)(2), or (e)(3) the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement concluded under subsection (a)(4), (a)(5), (e)(2), (e)(3) with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the President is authorized to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

[(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

[(h)(1) Any import relief provided pursuant to this section shall, unless renewed pursuant to paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section.

[(2) To the extent feasible, any import relief provided pursuant to this section for a period of more than 3 years shall be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect.

[(3) Any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the President determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after taking into account the considerations described in section 202(c), that such extension is in the national interest.

[(4) Any import relief provided pursuant to this section may be reduced or terminated by the President when he determines, after taking into account the advice received from the Commission under subsection (i)(2) or (i)(3) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest.

[(5) For purposes of this subsection and subsection (i), the import relief provided in the case of an orderly marketing agreement shall be the level of relief contemplated by such agreement.

[(i)(1) So long as any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

[(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

[(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

[(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

[(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

[(j) No investigation for the purposes of section 201 shall be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the last day on which import relief was provided with respect to such article pursuant to this section.

[(k)(1) Actions by the President pursuant to this section may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

[(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 201(b)(3)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).]

CHAPTER 1—IMPORT RELIEF

SEC. 201. PETITION FOR RELIEF.

(a) FILING.—A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall—

(1) include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition;

(2) if critical circumstances are alleged to exist, include information supporting that allegation; and

(3) if desired by the petitioner, request that an industry adjustment plan be prepared under section 203.

(b) DISTRIBUTION OF COPIES OF PETITIONS.—

Whenever a petition is filed under subsection (a), the Commission shall promptly transmit copies of the petition to the Trade Representative and the agencies directly concerned.

(c) EMERGENCY ACTION IF PERISHABLE PRODUCTS INVOLVED.—A person that files a petition under subsection (a) alleging import competition from a perishable product may also file a request with the Secretary of Agriculture in accordance with section 209 for emergency action under that section.

SEC. 202. PRELIMINARY DETERMINATION REGARDING CRITICAL CIRCUMSTANCES.

(a) IN GENERAL.—If a petition filed under section 201(a) alleges that critical circumstances exist, the Trade Representative shall, within 30 days after the date of filing, make a preliminary determination regarding whether there is the likelihood that such circumstances exist. The Trade Representative shall promptly publish notice of the determination in the Federal Register.

(b) ACTION IF DETERMINATION AFFIRMATIVE.—If the preliminary determination under subsection (a) is affirmative, the Trade Representative shall—

(1) order the suspension of the liquidation of all articles subject to the determination that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of notice in the Federal Register under subsection (a); and

(2) may order the posting of a cash deposit, bond, or other security, in such amount as he considers appropriate, for the entry of articles to which such suspension of liquidation applies.

(c) DURATION OF ACTION.—

(1) The Trade Representative shall terminate a suspension of liquidation ordered under subsection (b)(1), and release any bond or other security, and refund any cash deposit, required under subsection (b)(2) when—

(A) the Commission determines under section 204 that critical circumstances do not exist;

(B) a denial of import relief for the industry concerned under section 206 becomes final; or

(C) if the Commission determined that critical circumstances do exist and import relief of a kind not referred to in paragraph (2) is provided under section 206, the order implementing the relief may so provide.

(2) If the Commission determined that critical circumstances do exist and import relief described in section 210(2)(A)(i) or (ii) is provided under section 206, the increase in, or imposition of, duties under that relief shall apply to articles with respect to which liquidation was suspended under subsection (b)(1).

(d) CRITICAL CIRCUMSTANCES.—For purposes of this section, critical circumstances exist if a substantial increase (absolutely or relatively) in the quantity of an article being imported into the United States over a relatively short period of time has led to circumstances in which a delay in the taking effect of import relief would cause harm that would significantly impair the effectiveness of such relief.

(e) PERISHABLE PRODUCTS EXCLUDED.—Action may not be taken under this section with respect to any article that is a perishable product under section 209.

SEC. 203. INDUSTRY ADJUSTMENT PLANS.

(a) APPOINTMENT OF INDUSTRY ADJUSTMENT ADVISORY GROUP.—If the petitioner indicates under section 201(a)(3) that it wishes that an industry adjustment plan be prepared, the Trade Representative shall promptly—

(1) establish an industry adjustment advisory group (hereinafter referred to in this section as the "group" for the industry concerned; and

(2) after consultation with the petitioner, appoint the membership of the group which shall consist of—

(A) not less than 2, but not more than 4, individuals who are representative of the workers in the indistry.

(B) not less than 2, but not more than 4, individuals who are representative of firms within the industry, one of which shall be representative of small business firms,

(C) 1 representative for the communities that are, or will likely be, dislocated by the injury, or the threat thereof, to the industry caused by import competition,

(D) 1 individual who is knowledgeable regarding the special concerns of consumers of articles of the kind produced by the industry, and

(E) 1 representative from each of the Department of Labor, the Department of Commerce, and the Department of Agriculture (if injury, or the threat thereof, to an agricultural industry is alleged).

The Trade Representative, or a designee of the Trade Representative, shall chair the group.

(b) FUNCTION OF GROUP.—The group shall undertake to prepare, and submit to the Commission, and industry adjustment plan for the industry concerned. The last day on which a plan may be submitted by the group to the Commission is the 120th day after the day on which the petition is filed under section 201(a).

(c) PLAN CONTENTS.—The industry adjustment plan for an industry should contain—

(1) as assessment of the current problems of the industry (including, but not limited to, an assessment of the ability of producers in the industry to generate the adequate capital needed to modernize their domestic plants and equipment), and a strategy to enhance its competitiveness;

(2) objectives, and specific steps that workers and firms could usefully undertake, to improve the ability of the industry to compete or to assist the industry to adjust to new competitive conditions; and

(3) actions which may be taken by the appropriate Federal agencies under existing authority, or under new legislation, to assist—

(A) in achieving the objectives referred to in paragraph (2), and

(B) in remedying the dislocation to workers and communities caused by the serious injury, or threat thereof, caused by import competition.

To the extent practicable, objectives and steps referred to in paragraph (2) that are developed under a plan shall be designed to ensure that the industry concerned will be able to operate viably after import relief under this chapter is terminated.

(d) INTENTIONS REGARDING PLAN IMPLEMENTATION.—If a plan is prepared under this section for an industry, the Trade Representative, after submission of the plan to the Commission under subsection (b) and before the close of the period referred to in section 205(b), shall seek to obtain, on a confidential basis, information from workers and from firms in the industry regarding—

(1) how the workers and firms intend to act upon the objectives and steps specified in the plan; and

(2) any other actions the workers or firms, or both, intend to take which will foster such objectives.

The Trade Representative shall transmit such information to the Commission, the Secretary of Labor, and the Secretary of Commerce on a confidential basis. The Trade Representative shall include with such confidential information any other information obtained *by the Trade Representative on the capability, referred to in subsection (c)(1), of the industry to generate capital.*

(e) ADMINISTRATIVE SUPPORT.—The Trade Representative and, if appropriate, the Secretary of Labor, the Secretary of Commerce, and the Secretary of Agriculture shall provide appropriate administrative support to each group established under subsection (a).

(f) NO EFFECT IF PLAN NOT REQUESTED OR PREPARED.—Neither—

(1) the absence of a request by a petitioner that an industry adjustment plan be prepared under this section; nor

(2) the failure of a group to prepare an industry adjustment plan;

may be taken into account by the Commission or Trade Representative in making any determination, or taking any action, under this chapter.

SEC. 204. INVESTIGATIONS BY COMMISSION.

(a) IN GENERAL.—Upon—

(1) the filing of a petition under section 201(a);

(2) the request of the President or the Trade Representative;

(3) resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate; or

(4) its own motion;

Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or competitive with the imported article.

(b) ECONOMIC FACTORS.—

(1) In making determinations under subsection (a), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate domestic production facilities at a reasonable level of profit, and significant unemployment or underemployment within the industry;

(B) with respect to threat of serious injury—

(i) a decline in sales,

(ii) a decrease in market share,

(iii) a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers),

(iv) a downward trend in production, profits, wages, or employment (or increasing under-employment) in the domestic *industry concerned,*

(v) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to or on imports of such article into third country markets, and

(vi) the inability of producers in the domestic industry to generate adequate capital to finance the modernization of their domestic plants and equipment.

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

(2) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(c) DETERMINATION OF DOMESTIC INDUSTRY.—For purposes of subsection (a), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission shall—

(1) in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

(2) in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article; and

(3) in the case of one or more domestic producers who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(d) OTHER MATTERS PERTAINING TO INVESTIGATIONS.—In the course of any investigation under subsection (a), the Commission shall—

(1) for the purpose of assisting the Trade Representative in making determinations under section 205, investigate and report on efforts being made, or planned to be made, or both, by firms and workers in the industry to compete more effectively with imports;

(2) investigate any factor which in its judgment may be contributing to increased imports of the article under investigation, and, whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law; and

(3) after reasonable notice, hold public hearings and afford interested parties an opportunity to be present, to present evidence, and to be heard at such hearings.

(e) IMPORT RELIEF DETERMINATIONS.—

(1) If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (a), the Commission shall—

(A) determine the method and extent of import relief for the industry which is necessary to prevent or remedy that injury or threat; and

(B) if the petition alleged critical circumstances, determine if critical circumstances exist.

(2) If an industry adjustment plan for the industry was prepared under section 203, the Commission shall take the contents of the plan into account in making determinations under paragraph (1)(A).

(f) REPORT BY COMMISSION.—

(1) The Commission shall report to the Trade Representative its findings, and the basis therefor, with respect to each investigation undertaken under subsection (a). The report shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed, or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1)—

(A) any dissenting or separate views by members of the Commission regarding the findings;

(B) the import relief determination made under subsection (e);

(C) if an industry adjustment plan was prepared under section 203, a copy of the plan; and

(D) an estimate of the effect of the recommended import relief on consumers and on competitors in the domestic markets.

(3) The Commission, after submitting any report to the Trade Representative under paragraph (1), shall promptly make it available to the public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(4) Within 48 hours after the Commission finds with respect to any article the serious injury or threat thereof described in subsection (a), it shall notify the Secretary of Labor and the Secretary of Commerce of—

(A) the finding;

(B) the identity of the domestic producers and products within the scope of the finding; and

(C) all nonconfidential information obtained by the Commission during the investigation that may be relevant to a determination of eligibility for adjustment assistance under chapters 2 and 3.

(5) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed since the Commission made its report to the President or the Trade Representative as the case may be of the results of such previous investigation.

SEC. 205. ACTION BY TRADE REPRESENTATIVE AFTER INVESTIGATION.

(a) IN GENERAL.—

(1) After receiving a report from the Commission containing an affirmative finding under section 204 that increased imports have been a substantial cause of serious injury or the threat thereof with respect to an industry, the Trade Representative, subject to section 206, shall, unless he determines that the provision of import relief is not in the national economic interest of the United States, provide import relief to the extent that, and for such time (not to exceed 5 years) as, he determines necessary to prevent or remedy the serious injury or the threat thereof to the industry and to facilitate the orderly adjustment to competitive conditions by the industry.

(2) If an industry adjustment plan was prepared under section 203, the Trade Representative may condition the provision of the import relief on compliance by workers or firms, or both, in the industry with such elements of the plan as he considers appropriate.

(b) TIME LIMITATIONS.—The Trade Representative shall make the determinations necessary to carry out paragraph (1) or (2), as the case may be, of subsection (a) within 60 days (30 days in the case of a supplemental report under subsection (d)) after receiving a report from the Commission containing an affirmative finding under section 204 (or a finding under section 204 which he considers to be an affirmative finding, by reason of section 330(d) of the Tariff Act of 1930, within such 60-day (or 30-day) period); except that if information or advice is requested under subsection (e), the Trade Representative shall make the determinations necessary to carry out paragraph (1) or (2) within 30 days after the information or advice is received.

(c) FACTORS AFFECTING PROVISION OF IMPORT RELIEF.—In determining whether to provide, and the method and duration of, import relief under subsection (a)(1), the Trade Representative shall take into account, in addition to such other considerations as he may consider relevant—

(1) information and advice from the Secretary of Labor on the extent to which workers in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 2 or benefits from other manpower programs;

(2) information and advice from the Secretary of Commerce on the extent to which firms in the industry have applied for, are receiving, or are likely to receive adjustment assistance under chapter 3;

(3) the probable effectiveness of the provision of adjustment assistance under chapters 2 and 3 in remedying the dislocation to workers and communities caused by the serious injury or threat thereof to the industry;

(4) the contents of the industry adjustment plan, if any, prepared under section 203;

(5) the probable effectiveness of import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relative to the position of the industry in the Nation's economy;

(6) the effect of import relief on consumers (including the price and availability of the imported article and the like or di-

rectly competitive article produced in the United States) and on competition in the domestic markets for such articles;

(7) information and advice from the Secretary of Agriculture on the likely effect of the import relief on the agricultural exports of the United States;

(8) the effect of import relief on the international economic interests of the United States;

(9) the impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(10) the geographic concentration of imported products marketed in the United States;

(11) the extent to which the United States market is the focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(12) the economic and social costs which would be incurred by taxpayers, communities, and workers, if import relief were or were not provided.

(d) SUPPLEMENTAL REPORT.—The Trade Representative may, within 15 days after the date on which he receives an affirmative finding of the Commission under section 204 with respect to an industry, request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the Trade Representative's request, furnish additional information with respect to such industry in a supplemental report.

SEC. 206. CONDITIONS AND LIMITATIONS REGARDING IMPORT RELIEF.

(a) CONGRESSIONAL REVIEW.—

(1) On the day the Trade Representative makes the import relief determination necessary to carry out section 205(a), the Trade Representative shall transmit to Congress a document describing that relief. If the import relief to be provided by the Trade Representative differs from the import relief recommended by the Commission under section 204(e), he shall state the reason for the difference. The document shall also set forth the opinion of the Trade Representative regarding the likely impact, if any, that such import relief will have on agricultural exports of the United States.

(2) On the day on which the Trade Representative determines under section 205(a) that the provision of import relief to a domestic industry is not in the national economic interest of the United States, the Trade Representative shall transmit to Congress a document setting forth such determination and the reasons why, in terms of the national economic interest, he is not providing import relief and also what other steps he is taking, beyond adjustment assistance programs immediately available to help the industry to overcome serious injury and the workers to find productive employment.

(3) On the day on which the Trade Representative implements any import relief under section 205 not reported under para-

graph (1), he shall transmit to Congress a document setting forth the action he is taking and the reasons therefor.

(4) If the Trade Representative reports under paragraph (1) that the import relief being provided differs from the import relief recommended by the Commission under section 204(e), or that import relief will not be provided, the import relief recommended by the Commission under section 204(e) shall take effect (as provided in paragraph (5)) upon enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in paragraph (1) is transmitted to the Congress.

(5) If the contingency set forth in paragraph (4) occurs, the Trade Representative shall (within 30 days after the enactment of the joint resolution referred to in paragraph (4)) provide the import relief that was recommended by the Commission under section 204(e).

(b) TIME FOR TAKING EFFECT.—Import relief (other than through orderly marketing agreements) under this chapter shall be ordered, or otherwise implemented, and take effect within 15 days after the import relief determination date unless the Trade Representative announces on such date his intention to negotiate one or more orderly marketing agreements in which case import relief shall be implemented and take effect within 90 days after the import relief determination date.

(c) ORDERLY MARKETING AGREEMENTS.—

(1) If the Trade Representative provides import relief other than through orderly marketing agreements, he may, after such relief takes effect, negotiate orderly marketing agreements with foreign countries, and may, after such agreements take effect, suspend or terminate, in whole or in part, any import relief previously provided.

(2) If the Trade Representative negotiates an orderly marketing agreement and such agreement does not continue to be effective, he may, consistent with the limitations contained in section 207(a), provide any other import relief described in section 210(2).

(3) For purposes of this subsection, the term "import relief determination date" means the date of the Trade Representative's determination under section 305(a).

(d) TREATMENT OF CERTAIN SUSPENSIONS OF DUTY.—

(1) The suspension of—

(A) item 806.30 or 807.00 of the Tariff Schedules of the United States with respect to an article; and

(B) the designation of any article as an eligible article for purposes of title V;

shall be treated as an increase in duty under section 210(2)(A)(i).

(2) No order providing for a suspension referred to in paragraph (1) with respect to any article shall be made by the Trade Representative, or recommended by the Commission under section 204(e), unless the Commission, in addition to making an affirmative determination with respect to such article under section 204(a), determines in the course of its investigation under section 204 that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing

a like or directlly competitive article results from, as the case may be—

(A) the application of item 806.30 or item 807.00, or

(B) the designation of the article as an eligible article for the purposes of title V.

(e) REGULATIONS.—

(1) The Trade Representative shall by regulations provide for the efficient and fair administration of any the import relief provided under this chapter.

(2) In order to carry out an orderly marketing agreement concluded to carry out this chapter, the Trade Representative may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any orderly marketing agreement concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such agreements, including imports into a major geographic area of the United States, the Trade Representative may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively shall number of the larger importers.

SEC. 207. EXTENSION, MODIFICATION, AND TERMINATION OF IMPORT RELIEF.

(a) EXTENSION, MODIFICATION, AND TERMINATION.—Any import relief provided under this chapter—

(1) shall, unless extended under paragraph (3), terminate no later than the close of the day which is 5 years after the day on which import relief with respect to the article in question first took effect pursuant to this section;

(2) if provided for a period of more than 3 years, shall, to the extent feasible, be phased down during the period of such relief, with the first reduction of relief taking effect no later than the close of the day which is 3 years after the day on which such relief first took effect;

(3) may be extended by the Trade Representative at a level of relief no greater than the level in effect immediately before such extension, for one period of not more than 3 years if the Trade Representative determines, after taking into account the advice received from the Commission under subsection (b) and after taking into account the considerations described in section 204(c), that such extension is in the national interest; and

(4) shall be terminated by the Trade Representative if he determines, after taking into account the advice received from the Commission under subsection (b) and after seeing advice of the Secretary of Commerce and the Secretary of Labor (and the Secretary of Agriculture if an agricultural product is involved), that such reduction or termination is in the national interest.

(b) COMMISSION REVIEW.—

(1) So long as any import relief remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition). The Commission shall submit to the Trade Representative, and make available to the public, a report on the review undertaken under this paragraph for the first biennial period, and each annual period thereafter, that the import relief is in effect.

(2) Upon request of the Trade Representative or upon its own motion, the Commission shall advise the Trade Representative of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief.

(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any import relief provided under this chapter is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the Trade Representative of its judgment as to the probable economic effect on such industry of such termination.

(4) In advising the Trade Representative under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 205(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

SEC. 208. MISCELLANEOUS PROVISIONS.

(a) ARTICLES TO WHICH CHAPTER NOT APPLICABLE.—No investigations may be made under section 204 with respect to an article which has received import relief under this chapter unless 2 years have elapsed since the last day on which such import relief was provided with respect to that article.

(b) OTHER PROVISIONS.—

(1) Actions by the Trade Representative to this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 204(b)(3)(C), then the Trade Representative shall take into account the geographic concentration of domestic production and of imports in that area in providing import relief, if any, which may include actions authorized under paragraph (1).

SEC. 209. EMERGENCY ACTION REGARDING IMPORTS OF PERISHABLE PRODUCTS.

(a) IN GENERAL.—If a petition is filed with the Commission under section 201 alleging injury from imports of a perishable product, the petitioner may also file, at any time during the 150-day period after the date of filing under such section, a request with the Secretary of Agriculture (hereinafter in this section referred to as the "Secretary") that emergency action be taken under subsection (d) with respect to that product.

(b) DETERMINATION BY SECRETARY.—Within 20 days after a request is filed under subsection (a), the Secretary, after consultation with the Trade Representative and after providing opportunity for the presentation of views by interested parties, shall decide—

(1) whether there is reason to believe that the perishable product is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product; and

(2) if the decision under paragraph (1) is affirmative, whether emergency action under subsection (c) is warranted.

For purposes of paragraph (1), normal seasonable fluctuations in imports of a perishable product may not be treated as being a substantial cause of serious injury or the threat thereof.

(c) NEGATIVE DECISION.—(1) If a negative decision is made under subsection (b) regarding a request, the Secretary shall immediately publish notice of the decision in the Federal Register and advise the person who filed the request of the decision.

(2) After a negative decision is made under subsection (b), a request may be refiled with the Secretary. A request may be refiled one or more times, but a refiling may not be made—

(A) sooner than the 30th day after the date of a negative decision; or

(B) after the 150th day after the date on which the petition was initially filed under section 201.

(d) AFFIRMATIVE DECISION.—(1) If an affiqmative decision is made under subsection (b) regarding a request, the Secretary shall—

(A) determine the method and extent of emergency action to be imposed withj respect to imports of the perishable product concerned that is necessry to prevent injury to the domestic industry;

(B) immediately submit notice of the determination to the Trade Representative; and

(C) unless the Trade Representative decides within 7 days after the date of such notice that the taking of emergency action under this section to the domestic industry is not in the national economic interest, order the Commissioner of Customs to take such action with respect to imports of the perishable products.

(2)(A) Except as provided in subparagraph (B), emergency action under this section may consist of either or both of the following:

(i) An increase in, or the imposition of, a duty on the perishable product.

(ii) A modification of, or the imposition of, a quantitative limitation on the importation into the United States of the perishable product

(B) If a decision by the Secretary under subsection (b) covers any article that is a perishable product—

(i) of a beneficiary country within the meaning of paragraph (5) of section 213(f) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(f)(5)); or

(ii) of Israel within the meaning of subsection (e) of section 404 of the Tariff and Trade Act of 1984 (19 U.S.C. 2112 note);

the Secretary may take with respect to that product only the emergency action authorized under such section 213(f) or section 404, as the case may be.

(e) REQUEST FOR TERMINATION OF EMERGENCY ACTION.—(1) Any person who is adversely affected by the taking of emergency action may, on or after the 30th day after the day such action first took effect, request the Secretary to terminate the action.

(2) Within 20 days after a request is filed under paragraph (1), the Secretary, after consultation with the Trade Representative and after providing opportunity for the presentation of views by interested persons, shall decide whether changed circumstances warrant the termination of the emergency action.

(3) If a negative decision is made under paragraph (2) regarding a request, the Secretary shall immediately publish notice of the decision in the Federal Register and advise the person who filed the request of the decision. After a negative decision under paragraph (2) is made, a request may be refiled with the Secretary. A request may be refiled one or more times, but a refiling may not be made—

(A) sooner than the 30th day after the date of a negative determination; or

(B) after the day on which the Commission issues its report under section 204(f) regarding the petition filed under section 201.

(4) If an affirmative determination is made under paragraph (2) regarding a request, the Secretary shall order the Commissioner of Customs to immediately terminate the action.

(f) TERMINATION OF EMERGENCY ACTION.—Unless terminated under subsection (e)(4), emergency action that is taken under subsection (c) with respect to an imported perishable product may not remain in effect after the date on which—

(1) the Commission reports under section 204(f) that it did not find the serious injury or threat thereof described in section 204(a) to the industry;

(2) the denial of import relief for the industry under section 206 becomes final; or

(3) import relief for the industry first takes effect under section 205(a) or 206(a)(5) except that the Secretary may terminate such action whenever he determines that because of changed circumstances such action is no longer warranted.

(g) DEFINITION OF PERISHABLE PRODUCT.—For purposes of this section, the term "perishable product" has the same meaning that is given that term under section 404(e) of the Tariff and Trade Act of 1984 (12 U.S.C. 2112 note).

SEC. 210. DEFINITIONS.

As used in this chapter:

(1) The term "Commission" means the United States International Trade Commission.

(2)(A) The term "import relief" means one or more of the following actions with respect to an imported article:

(i) Subject to subparagraph (B), the ordering of an increase in, or imposition of, any duty on the article.

(ii) Subject to subparagraph (B), the ordering of a tariff-rate quota on the article.

(iii) The ordering of a modification of, or the imposition of, any quantitative restriction on the importation into the United States of the article.

(iv) The negotiation, conclusion, and carrying out of orderly marketing agreements with foreign countries limiting the export from foreign countries and the importation into the United States of the article.

(B) No order issued to implement import relief described in clause (i) or (ii) of subparagraph (A) shall be made increasing a rate of duty to (or imposing) a rate which is more than 50 percent ad valorem above the rate (if any) existing at the time of the order.

(C) The import relief specified in clauses (iii) and (iv) of subparagraph (A) may not be provided to any industry at the same time.

(3) The term "industry" includes producers located in the United States insular possessions.

(4) The phrase "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

(5) The term "substantial cause" means a cause which is important and not less than any other cause.

(6) The term "Trade Representative" means the United States Trade Representative.

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A—Petitions and Determinations

SEC. 221. PETITIONS.

[(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers or be their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.]

(a)(1) A petition for certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers or by their certified or recognized union or other duly authorized representative.

(2) If the petitioning group of workers is in a domestic industry with respect to which the United States International Trade Commission (hereinafter in this chapter referred to as the "Commission") has determined, within 3 years before the date of the petition, under section 203(a) that an imported article is the substantial cause of serious injury, or threat thereof, to that industry, the Secretary shall give expedited consideration to the petition. For purposes of this paragraph, a tie vote by the Commissioners on a petition may not be treated as an affirmative determination.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

* * * * * * *

SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.

(a) Whenever the [International Trade Commission (hereafter referred to in this chapter as the "Commission")] begins an investigation under section [201] *204* with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201.] *204(f)*. Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

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CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 251. PETITIONS AND DETERMINATIONS.

[(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.]

(a)(1) A petition for certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the "Secretary") by a firm or its representative.

(2) If the petitioning firm is in a domestic industry with respect to which the United States International Trade Commission has deter-

mined, within 3 years before the date of the petition, under section 203(a)(1) that an imported article is the substantial cause of serious injury, or threat thereof, to that industry, the Secretary shall give expedited consideration to the petition. For purposes of this paragraph, a tie vote by the Commission on a petition may not be treated as an affirmative determination.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

* * * * * * *

SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.

(a) Whenever the Commission begins an investigation under section [201] *204* with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section [201] *204(f).* Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section [201(b)] *204(a)* that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

* * * * * * *

TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

(a) DETERMINATIONS REQUIRING ACTION.—

[(1) IN GENERAL.—If the President determines that action by the United States is appropriate—

[(A) to enforce the rights of the United States under any trade agreement; or

[(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

[(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

[(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.]

(1) MANDATORY ACTION.—

(A) IN GENERAL.—If the President on his own motion determines, or the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") determined under section 304(a), that—

(i) the rights of the United States under any trade agreement are being denied; or

(ii) an act, policy, or practice of a foreign country—

(I) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(II) is unjustifiable and burdens or restricts United States commerce (including commerce between the United States and another foreign country),

the President, subject to subparagraph (B), shall take action under subsection (b) or (c), or both, and shall take all other appropriate and feasible action within his power, to enforce such rights or to obtain the elimination of such act, policy, or practice. Such action shall be devised so as to affect goods or services of the foreign country involved in an amount that is equivalent in value to, and necessary to eliminate fully, the burden or restriction being imposed by that country on United States Commerce.

(B) EXCEPTION.—The President is not required to take action under subparagraph (A) in any case in which—

(i) the Contracting Parties to the General Agreement on Tariffs and Trade (hereinafter in this title referred to as the "GATT") have determined, or a panel of experts has reported to the Contracting Parties, that—

(I) the rights of the United States under a trade agreement are not being denied; or

(II) the act, policy, or practice is not a violation of, or inconsistent with, the rights of the United States, or does not deny, nullify, or impair benefits to the United States under any trade agreement; or

(ii) the President finds that—

(I) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(II) the foreign country has agreed to eliminate or phase out the act, policy, or practice, or has agreed to an imminent solution, that is satisfactory to the President, to the burden or restriction on United States commerce,

(III) it is impossible for the foreign country to achieve the results described in subclause (I) or (II), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the President, or

(IV) such action is not in the national economic interest of the United States because it would result in United States economic interests being more adversely affected if action were taken under this subclause than if not, and he includes the reasons for such finding in the report required under paragraph (D).

(C) EXPORT TARGETING.—If—

(i) the Trade Representative determines that a policy or practice of export targeting by a foreign country exists with respect to a class or kind of merchandise under investigation; and

(ii) the United States International Trade Commission (hereinafter in this chapter referred to as the "Commission") determines under subsection (d) of section 302 that imports or sales for importation of that merchandise are causing the injury, threat of injury, or retardation described in paragraph (1) of that subsection to an industry in the United States;

the President shall take all appropriate and feasible action within his power to obtain the elimination of, or to offset fully the injurious effects of, such export targeting (or both obtain such elimination and offset such effects). Such action shall consist of—

(I) action under subsection (b) or (c), or both;

(II) the entry into an agreement under which the foreign country provides an imminent solution to the burden or restriction on United States commerce, or compensatory trade benefits satisfactory to the President;

(III) administrative actions, and, if necessary, proposed legislation, to implement any other government action which would restore or improve the international competitive position of the industry that has been injured or threatened with injury; or

(IV) any combination of the actions listed in subclauses (I), (II), and (III).

Any action taken under subsection (b) or (c) shall be devised so as to affect goods or services of the foreign country involved in an amount that is equivalent in value to, and necessary to eliminate fully, the burden or restriction imposed by that country on United States commerce not otherwise eliminated or offset under this subparagraph. The action under this subparagraph shall, to the extent possi-

ble, reflect the full benefit level of the policy or practice of export targeting to the beneficiary over the period during which it has an effect.

(D) REPORT TO CONGRESS.—The President shall promptly report in writing to Congress with respect to each action taken (or the reasons why no action was taken)—

(i) to enforce the rights of the United States or to eliminate the acts, policies, and practices described in subparagraph (A); or

(ii) to eliminate or offset the policy or practice described in subparagraph (C).

(2) DISCRETIONARY ACTION.—If the President on his own motion determines, or the Trade Representative determines under section 304(a), that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce (including commerce between the United States and another foreign country); the President, if he determines that action by the United States is appropriate, shall take all appropriate and feasible action within his power to obtain the elimination of that act, policy, or practice.

(3) EFFECT IF ACTION REQUIRED TO BE TAKEN UNDER SECTION 311.—The President may not take any action under paragraph (1) or (2) with respect to a foreign country during any time during which action is required to be taken regarding that country under section 311.

(4) UNITED STATES AGRICULTURAL EXPORTS.—Before determining to take action to restrict import under this subsection, the President shall take into account the likely impact that such action will have on United States agricultural exports. A statement regarding the likely impact, if any, of an import restricting action on United States agricultural exports shall be included in the notice of the determination required to be published under subsection (d).

[2] *(5)* SCOPE OF ACTION.—The President may exercise his authority under this section with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country [or instrumentality] involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

(b) OTHER ACTION.—[Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—] *For purposes of carrying out paragraphs (1) and (2) of subsection (a), the President is authorized to—*

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country [or instrumentality] involved;

(2) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country [or instrumentality] for such time as he determines appropriate[.]*; or*

(3) withdraw or refrain from proclaiming under title V—

(A) the designation of such foreign country as a beneficiary developing country; or

(B) the designation of any product of such foreign country as an eligible article.

(c) ADDITIONAL ACTIONS ON SERVICES.—

(1) IN GENERAL.—Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in subsection (b), the President [may] *is authorized to—*

(A) restrict, in the manner and to the extent the President deems appropriate, the terms and conditions of any such authorization, or

(B) deny the issuance of any such authorization.

(2) AFFECTED AUTHORIZATIONS.—Actions under paragraph (1) shall apply only with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(A) a petition is filed under section 302(a), or

(B) a determination to initiate an investigation is made by the [United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative")] *Trade Representative* under section 302(c).

* * * * * * *

(d) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—[If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register.] *If the President determines to take action on his own motion under subsection (a)(1) or (2), the President shall publish notice of the determination, including the reasons therefor, in the Federal Register.* Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views *by interested persons* concerning the taking of such action.

[(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.]

(2) ACTION AFTER RECOMMENDATION.—

(A) IN GENERAL.—Unless subparagraph (B) applies, the President, within 30 days after the date he receives the rcommendation of the Trade Representative under section 304 shall—

(i) determine what action, if any, he will take under this section; and

(ii) implement the action.

(B) DELAY IN DETERMINING OR IMPLEMENTING ACTION.—Subject to subparagraph (C), the President may delay deter-

mining the action he will take, or delay implementing action, under subsection (b) or (c), or both—

(i) if either—

(I) in the case of an investigation initiated under section 302(b), the petitioner requests such delay, or

(II) in the case of an investigation initiated under section 302(c), such delay is requested by the domestic industry that would benefit from the action; or

(ii) the President determines that substantial progress is being made to grant the rights or to achieve a satisfactory solution with respect to the act, policy, or practice concerned.

(C) LIMITATION ON DELAY AND IMPLEMENTATION.—No delay under subparagraph (B)—

(i) in determining what action to take;

(ii) in implementing an action; or

(iii) in both determining and implementing an action;

may exceed 90 days.

(D) NOTICE.—The President shall promptly cause notice to be published in the Federal Register of—

(i) each determination made under subparagraph (A);

(ii) each delay decided upon under subparagraph (B); and

(iii) the reasons for the determination or delay.

(e) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this [section] *chapter*—

(1) * * *

* * * * * * *

(2) VESSEL CONSTRUCTION SUBSIDIES.—An act, policy, or practice of a foreign country [or instrumentality] that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country [or instrumentality] of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

[(3) UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

[(A) market opportunities;

[(B) opportunities for the establishment of an enterprise; or

[(C) provision of adequate and effective protection of intellectual property rights.]

(3) UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, toleration of cartels, and any act, policy, or practice that—

(A) denies internationally recognized worker rights which include—

(i) the right of association,

(ii) the right to organize and bargain collectively,

(iii) a prohibition on the use of any form of forced or compulsory labor,

(iv) a minimum age for the employment of children, and

(v) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(B) denies fair and equitable—

(i) market opportunities,

(ii) opportunities for the establishment of an enterprise, or

(iii) provision of adequate and effective protection of intellectual property rights.

* * * * * * *

(7) FOREIGN COUNTRY.—The term "foreign country" includes any foreign instrumentality.

(8) EXPORT TARGETING.—The term "export targeting" means any government plan or scheme consisting of a combination of coordinated actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(9) INTERESTED PERSONS.—For purposes of sections 301(d)(1), 302(b)(2)(B), 304(b)(1), and 307(b), the term "interested persons" includes, but is not limited to, domestic firms and workers, representatives of consumer interests, and United States product exporters that may be affected.

SEC. 302. [INITIATION OF] INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) FILING OF PETITION.—

(1) IN GENERAL.—Any interested person may file a petition with the [United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative")] *Trade Representative* requesting the President to take action under section 301 and setting forth the allegations in support of the request.

* * * * * * *

(b) DETERMINATIONS REGARDING PETITIONS.—

(1) * * *

[(2) AFFIRMATIVE DETERMINATION.—If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

[(A) within the thirty-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

[(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.]

(2) AFFIRMATIVE DETERMINATION.—

(A) INITIATION.—If the Trade Representative determines to initiate an investigation with respect to a petition he shall initiate an investigation with respect to the issues raised. If the investigation is with regard to alleged export targeting, the Trade Representative shall immediately trnsmit to the Commission a copy of the petition or, if the investigation is initiated by motion of the Trade Representative, a written statement describing the issues under investigation.

(B) NOTICE.—The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views by interested persons concerning the issues, including a public hearing—

(i) within the thirty-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(ii) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(C) SPECIAL RULES IN EXPORT TARGETING INVESTIGATIONS.—

(i) TIME FOR DETERMINATION.—If a petition alleges export targeting, the Trade Representative must make a determination regarding the allegation within 180 days after the date on which the investigation is initiated. The Trade Representative shall publish notice of the determination in the Federal Register. The Trade Representative may consult with appropriate Federal agencies in making that determination.

(ii) TERMINATION.—If the determination of—

(I) the Trade Representative under clause (i) is negative; or

(II) the Commission under section 302(d)(1) is negative;

the Trade Representative shall terminate the investigation.

(c) DETERMINATION TO INITIATE BY MOTIONS OF TRADE REPRESENTATIVE.–

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(3) MANDATORY INITIATION.—Within 90 days after an act, policy, or practice is identified under section 181(b)(1) as having significant adverse impact on United States exports, the Trade Representative, if the act, policy, or practice—

(A) is considered by the Trade Representative as likely being an act, policy, or practice described in section 301(a)(1)(A); and

(B) is not otherwise the subject of an investigation under this title;

shall consult with interested persons and shall initiate an investigation under subsection (b)(2) regarding that act, policy, or practice if the Trade Representative determines that—

(i) such consultations indicate the action under this subchapter would likely result in expanded export opportunities for United States products;

(ii) action under this subchapter would not likely result in United States exports suffering significant adverse effects because of displacement in export markets, foreign retaliation, or foreign action that is similar to action that could be taken under this subchapter; and

(iii) it is in the economic interest of the United States to initiate such an investigation.

(d) INJURY CAUSED BY EXPORT TRAGETING.—

(1) DETERMINATION BY COMMISSION.—No later than the 180th day after the date on which the Trade Representative transmits to the Commission under subsection (b)(2)(A) a copy of a petition or a written statement regarding alleged export targeting with respect to a class or kind of merchandise, the Commission shall make a determination (and report the determination and the basis therefor to the Trade Representative) regarding whether—

(A) an industry in the United States in materially injured, or is threatened with material injury; or

(B) the establishment or growth of an industry in the United States is being materially retarded;

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation.

(2) MATERIAL INJURY.—

(A) IN GENERAL.—The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under this subsection, the Commission shall consider, among other factors—

(i) the volume of imports or sales of the merchandise which is the subject of the investigation;

(ii) the effect of imports or sales of that merchandise on prices in the United States for like products; and

(iii) the impact of imports or sales of such merchandise on domestic producers of like products.

(C) EVALUATION OF VOLUME AND PRICE EFFECTS.—For purposes of this subsection—

(i) VOLUME.—In evaluating the volume of imports or sales of merchandise, the Commission shall consider whether the volume of imports or sales of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.

(ii) PRICE.—In evaluating such effect of imports or sales of the merchandise on prices, the Commission shall consider—

(I) whether there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States; and

(II) whether the effect of imports or sales of such merchandise otherwise depresses prices to a significant degree or prevents to a significant degree price increases that otherwise would have occurred.

(iii) IMPACT ON AFFECTED INDUSTRY.—In examining the impact on the affected industry involved in the investigation, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity;

(II) factors affecting domestic prices;

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, outlays for research and development, and investment; and

(IV) decrease in sales or prices, or both, of United States exports of like products in third country markets.

(3) THREAT OF MATERIAL INJURY.—

IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise under investigation, the Commission shall consider among other relevant economic factors—

(i) any increase in production capacity or existing unused capacity in the exporting country under investigation that is likely to result in a significant increase in imports of the merchandise to the United States;

(ii) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;

(iii) the probability that imports of the merchandise under investigation will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of like products;

(iv) any substantial increase in inventories of the merchandise in the United States; and

(v) any other demonstratable adverse trends that indicate the probability that the importation (or sales for importation) of such merchandise will be the cause of actual injury.

(B) BASIS FOR DETERMINATION.—Any determination by the Commission under this subsection that an industry in the United States is threatened with material injury shall

be made on the basis of the evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

(4) ADDITIONAL FACTORS.—The Commission shall also take into account, in addition to the factors under paragraph (2)(B)(iii), such information as may be available to it as to actual or potential sales by the country under investigation to third country markets and the impact of such sales on the affected industry, including the impact on sales or prices of like products of the United States to such third country markets.

(5) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under paragraph (2)(C) or (3) shall not necessarily give decisive guidance with respect to the determination of material injury by the Commission.

(6) REMEDIES UNDER TARIFF ACT OF 1930.—If, in the course of an investigation conducted under this subsection, the Commission has reason to believe that a foreign government is engaged in any action or practice for which relief is available under section 303 or title VII of the Tariff Act of 1930, the Commission shall inform the administering authority and the Trade Representative. The Trade Representative shall consult with the petitioner, if any, regarding the advisability and desirability of taking action under the appropriation provisions of section 303 or title VII of the Tariff Act of 1930.

(e) OBTAINING INFORMATION.—

(1) IN GENERAL.—With respect to any investigation initiated under subsection (b)(2), the Trade Representative shall direct to the foreign countries relevant to the investigation such inquiries as the Trade Representative considers appropriate for the purpose of obtaining information relevant to the determinations and recommendations required under section 304(a).

(2) VERIFICATION AND USE OF BEST INFORMATION OTHERWISE AVAILABLE.—The Trade Representative may, as to any information furnished in response to an inquiry under paragraph (1), request that the foreign country furnishing such information provide such documentation, or permit such verification, of the information as the Trade Representative considers appropriate. With respect to any information requested in an inquiry under paragraph (1) which is either—

(A) not furnished in a timely manner;

(B) is furnished in incomplete or inadequate form; or

(C) is not documented or verified to the extent considered sufficient by the Trade Representative;

the Trade Representative may disregard all or any part of such information, and instead utilize the best information otherwise available for purposes of making the determinations and recommendations required under section 304(a).

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(a) IN GENERAL.—On the date an affirmative determination is made under section 302(b), the Trade Representative, on behalf of the United States, shall request consultations with the foreign country [or instrumentality] concerned regarding issues raised in the petition or the determination of the Trade Representative under section 302(c)(1). If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) DELAY OR REQUEST FOR CONSULTATIONS FOR UP TO 90 DAYS.—

(1) IN GENERAL.—Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, *after consulting with the petitioner,* delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

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SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.

(a) RECOMMENDATIONS.—

[(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Trade Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—]

(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in section 301(a) exists; and

(B) if the determination under subparagraph (A) is affirmative, and, if the investigation was with regard to alleged export targeting, the Commission made an affirmative determination under section 302(d) regarding injury, the threat of injury, or retardation, recommend to the President what action the President should take under section 301.

(2) TIME FOR MAKING DETERMINATIONS AND RECOMMENDATIONS.—The Trade Representative shall make the determination and recommendation, if required, under paragraph (1) not later than—

*   *   *   *   *   *   *

(A) * * *

* * * * * * *

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded, *or 9 months after the date of the investigation initiation, whichever first occurs;* or

(D) [12 months] *9 months (11 months in the case of a petition alleging export targeting)* after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

[2]*(3)* SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph [1]*(2)* would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country [or instrumentality] before the 12-month period referred to in subparagraph (B) expires, the Trade Representative shall make the recommendation required under paragraph [1]*(2)* with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country [or instrumentality] concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

[3]*(4)* REPORT IF SETTLEMENT DELAYED.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph [1]*(2)*(C) (other than the Subsidies Agreement), the Trade Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) CONSULTATION BEFORE RECOMMENDATION.—[Before recommending that the President take action under section 301] *Before making a recommendation to the President under subsection (a) on what action, if any, he should take under section 301, including action* with respect to the treatment of any product or service of a foreign country [or instrumentality] which is the subject of a petition filed under section 302, the Trade Representative, unless he determines that expeditious action is required—

[(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;]

(1) shall provide opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, and such opportunity shall include a public hearing, if requested by any interested person;

(2) shall, if a policy or practice of export targeting is involved, consult with representatives of the United States industry and workers affected by the policy or practice, and with other interested persons, with respect to the nature of the appropriate remedial action, including possible affirmative measures to enhance the international competitiveness of that industry;

[2]*(3)* shall obtain advice from the appropriate advisory representatives provided for under section 135; and

[3]*(4)* may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Trade Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

SEC. 305 REQUESTS FOR INFORMATION.

(a) IN GENERAL.—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government [or instrumentality] with respect to particular merchandise, to the extent that such information is available to the Trade Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) IF INFORMATION NOT AVAILABLE.—If information that is requested by [an interested party] *a person* under subsection (a) is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline to request the information and inform the person in writing of the reasons for the refusal.

(c) CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE—

(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) USE OF INFORMATION.—The Trade Representative may—

(A) use such information, or make such informtion available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

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SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.

(a) IN GENERAL.—The President may modify or terminate an action taken under section 301 if—

(1) the Contracting Parties to the GATT have determined, or a panel of experts has reported to the Contracting Parties, that—

(A) the action violates, or is inconsistent with, the international obligations of the United States, or

(B) the foreign act, policy, or practice to which the action responds—

(i) is not a violation of a trade agreement, or

(ii) is not inconsistent with the provisions of, or otherwise does not otherwise deny, nullify, or impair benefits to the United States under, any trade agreement; or

(2) the President determines that—

(A) the foreign act, policy, or practice has been eliminated or is being phased out in a manner satisfactory to the President, or

(B) on the basis of review and assessment under subsection (b), the action is not effective or its continuation is not in the national economic interest.

(b) BIENNIAL REVIEW AND ASSESSMENT.—The Trade Representative shall, on a biennial basis, review and assess the results of each

action taken under section 301. On the basis of such review, the Trade Representative shall recommend that such modifications and terminations be made under subsection (a) as he considers appropriate. During the review, the Trade Representative shall consult with the petitioner, if any, and other interested persons affected by the action under review concerning its effectiveness and whether any modification or termination of the action is indicated.

(c) NOTICE; REPORT TO CONGRESS.—The President shall promptly cause notice to be published in the Federal Register of, and report in writing to Congress with respect to, any modification or termination of an action under subsection (a) and the reasons therefor.

Subchapter B—Special Provisions Regarding Trade Deficits

SEC. 311. MANDATORY NEGOTIATIONS AND ACTION REGARDING FOREIGN COUNTRIES HAVING EXCESSIVE AND UNWARRANTED TRADE SURPLUSES.

(a) DETERMINATION OF EXCESSIVE TRADE SURPLUS COUNTRIES.—

(1) DETERMINATIONS.—The Commission, on the basis of the best available trade data, shall—

(A) determine whether each major exporting country is an excessive trade surplus county for 1985 and for each year occurring within the period beginning on January 1, 1987, and ending December 31, 1990; and

(B) determine if the percentage obtained by dividing—

(i) the deficit of the United States, if any, in the merchandise balance of trade between the United States and the rest of the world during each of such years, by

(ii) the gross national product of the United States for such year,

is less than 1.5 percent.

(2) REPORTS.—The commission shall make the determinations required under paragraph (1), and prepare and submit to the Trade Representative a report thereon, by April 1 of the year after the year with respect to which the determinations apply; except that the determinations for 1985 must be made, and the report submitted, by December 1, 1986.

(3) PUBLICATION IN FEDERAL REGISTER.—Each report submitted to the Trade Representative under paragraph (2) shall be published in the Federal Register.

(4) SUSPENSION OF APPLICATION OF SECTION.—For any year for which the Commission reports that the percentage referred to in paragraph (1)(B) is less than 1.5 percent—

(A) no determinations are required under subsection (b)(1) for that year; and

(B) no actions may be taken under subsection (e) during that year.

(b) DESIGNATION OF EXCESSIVE AND UNWARRANTED TRADE SURPLUS COUNTRIES.—

(1) DETERMINATIONS.—The Trade representative shall, during the 15-day period beginning on the day after the day on which

a report is submitted under subsection (a)(2) (but before January 1, 1987, with respect to the report submitted for 1985), determine whether each major exporting country identified as an excessive trade surplus country in the report maintained, during the year to which the report applies, a pattern of unjustifiable unreasonable, or discriminatory trade policies or practices that have a significant adverse effect on United States commerce and contribute to the excessive trade surplus of that country. In making determinations under this paragraph, the Trade Representative shall take into account—

(A) information submitted under section 181;

(B) the recommendations, if any, for action made under section 304 with respect so that country;

(C) countervailing duty and antidumping duty actions taken under section 303 and title VII of the Tariff Act of 1930 with respect to merchandise of that country;

(D) adverse determinations under the GATT relating to that country; and

(E) any other relevant information pertaining to the trade practices or policies of that country, including, but not limited to, the existence of discriminatory government procurement, excessive government regulation designed to discriminate against imported products, governmental tolerance of extensive dumping in foreign markets, export subsidy and targeting policies, excessive tariff barriers, and any other illegal trade barrier.

(2) DESIGNATION.—If not designated as an excessive and unwarranted trade surplus country for the preceding year, a major exporting country with respect to which affirmative determinations are made under subsection (a)(1) and paragraph (1) for the same year shall, on the last day of the 15-day period referred to in paragraph (1), be designated as an excessive and unwarranted trade surplus country for such same year and such designation shall remain in effect until terminated.

(3) TERMINATION OF DESIGNATIONS.—The designation of a major exporting country as an excessive and unwarranted trade surplus country shall terminate if a negative determination is made by the Commission under subsection (a)(1) with respect to any year, or by the Trade Representative under paragraph (1) with respect to any year. The termination shall apply for the year in which either of such negative determinations is made and shall continue in effect until affirmative determinations, if any, regarding that country are made under subsection (a)(1) and paragraph (1) with respect to the same year.

(4) LIST.—The Trade Representative shall publish in the Federal Register, by the 10th day after the last day of the 15-day period referred to in paragraph (1), a list of all major exporting countries the designations of which as excessive and unwarranted trade surplus countries have not been terminated.

(c) SURPLUS REDUCTION GOALS.—

(1) FOR COUNTRIES DETERMINED TO BE EXCESSIVE AND UNWARRANTED TRADE SURPLUS COUNTRIES FOR 1985.—With respect to any major exporting country designated as an excessive and

unwarranted trade surplus country for 1985, the surplus reduction goals are—

(A) a bilateral trade surplus during 1987 in an aggregate value not exceeding 90 percent of the bilateral trade surplus of that country for 1985; and

(B) a bilateral trade surplus for each year after 1987 in an aggregate value not exceeding 90 percent of the amount of the bilateral trade surplus of that country for the preceding year that would have occurred if the surplus reduction goal for the preceding year had been met.

(2) FOR OTHER COUNTRIES.—With respect to any major exporting country designated as an excessive and unwarranted trade surplus country for any year (hereafter in this paragraph referred to as the "designation year") after 1986, the surplus reduction goals are—

(A) a bilateral trade surplus during the year after the designation year in an aggregate amount not exceeding 90 percent of the bilateral trade surplus of that country for the designation year; and

(B) a bilateral trade surplus for each year thereafter in an aggregate amount not exceeding 90 percent of the amount of the bilateral trade surplus of that country for the preceding year that would have occurred if the surplus reduction goal for the preceding year had been met.

(d) NEGOTIATIONS.—

(1) IN GENERAL.—During the 60-day period after the 15-day period referred to in subsection (b)(1), the Trade Representative shall enter into negotiations with each foreign country that was designated as an excessive and unwarranted trade surplus country on the last day of that 15-day period under subsection (b)(2) for the purpose of entering into a bilateral trade agreement to achieve the surplus reduction goals set forth in subsection (c).

(2) EXTENSION.—If the Trade Representative considers that further negotiations with a foreign country are necessary to reach an agreement that will achieve the surplus reduction goals referred to in subsection (c), the Trade Representative may extend the 60-day period referred to in paragraph (1) by not more than an additional 60 days.

(e) PRESIDENTIAL ACTION.—If the Trade Representative is unable to enter into a trade agreement under subsection (d) with an excessive and unwarranted trade surplus country to achieve the surplus reduction goals set forth in subsection (c), the President, after the close of the 60-day negotiating period (or the last day of that period as extended under subsection (d)(2)), shall take such of the following actions with respect to the country that he considers necessary or appropriate to achieve the surplus reduction goals:

(1) Suspend, withdraw, or prevent the application of benefits of trade agreement concessions to carry out any trade agreement with that country.

(2) Direct customs officers to assess duties or impose other import restrictions on the products of that country for such time, in such an amount, and to such a degree as the President determines appropriate.

(3) Negotiate agreements (including, but not limited to, orderly marketing agreements) with that country.

(4) Take administrative action, and if necessary, propose legislation, to implement any other government action which would restore or improve the international competitive position of United States industries with that country;

except if the action taken under any of paragraphs (1) through (4) with respect to any year does not achieve the surplus reduction objective for that year, the President, for the next year, shall impose such quantitative restrictions on the importation into the United States of the products of that country as are necessary to ensure that the reduction goal for the next year is achieved. The President shall take into account the effect that action proposed to be taken under this subsection may have on existing bilateral trade agreements.

(f) SURPLUS GOAL REDUCTION AND WAIVER.—

(1) IN GENERAL.—Subject to paragraph (2), the President may—

(A) reduce the surplus reduction goal under subsection (c) for any excessive and unwarranted trade surplus country for any year if the President—

(i) considers that, because of balance of payment difficulties (including debt repayments), the country cannot meet the goal for that year without suffering significant economic harm; and

(ii) develops a plan of action for otherwise achieving the fundamental purpose of this section; or

(B) waive the taking of any action under subsection (e) with respect to any excessive and unwarranted trade surplus country for any year if he—

(i) considers that the taking of any such action would cause substantial harm to the national economic interest of the United States, and

(ii) develops a plan of action for otherwise achieving the fundamental purposes of this section.

(2) CONDITIONS AFFECTING REDUCTIONS AND WAIVERS.—

(A) CONGRESSIONAL NOTIFICATION.—No reduction under paragraph (1)(A) or waiver under paragraph (1)(B) for any year with respect to any excessive and unwarranted trade surplus country shall have force and effect unless the President submits to the Congress within 10 days after the close of the period referred to in subsection (e) a document stating his intention to implement such a reduction or waiver and containing the plan of action required under such paragraph for achieving the fundamental purposes of this section.

(B) CONGRESSIONAL DISAPPROVAL.—No reduction under paragraph (1)(A) or waiver under paragraph (1)(B) for any year with respect to any excessive and unwarranted trade surplus country shall have force and effect if a joint resolution described in section 152(a)(1)(C) is enacted within the 60-day period beginning on the date on which the document referred to in subparagraph (A) regarding the reduction or waiver is submitted to Congress.

(g) ROUNDING OF TRADE STATISTICS.—For purposes of this section, any trade statistic or limitation shall—

(1) be rounded off to the nearest billion dollars; and

(2) shall be adjusted to reflect the fact that certain products of the United States may not, under law, be exported.

(h) ADMINISTRATION.—

(1) IN GENERAL.—The President shall apply the actions taken under subsection (e) on such intra-annual bases as the President considers appropriate to achieve the purposes of this section.

(2) MONITORING.—The Secretary of the Treasury and the Commission shall undertake such intra-annual monitoring and analysis of the imports to the United States of products of excessive and unwarranted trade surplus countries with respect to which trade agreements entered into under subsection (d) and actions under subsection (e) are in force as may be necessary for purposes of evaluating the efficacy of the actions. The results of all such monitoring and analysis shall be immediately submitted to the President and the Trade Representative.

(3) CPI ADJUSTMENT.—For each year after 1986, the Trade Representative shall adjust the dollar limitation set forth in subsection (i)(2) and (5) to reflect the percentage increase or decrease in the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor, for the preceding year.

(i) DEFINITIONS.—For purposes of this section—

(1) The term "excessive trade surplus country" means any major exporting country which has—

(A) a bilateral export percentage for the year that exceeds 175 percent, and

(B) a bilateral trade surplus for the year that exceeds the bilateral trade surplus limitation for such country for the year.

(2) A foreign country is a major exporting country for a year if the aggregate value of the merchandise trade between such foreign country and the United States during such year is more than $7,000,000,000.

(3) The term "foreign country" includes any instrumentality of a foreign country.

(4) The term "bilateral export percentage" means, with respect to any foreign country for any year, the percentage determined by dividing—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year; by

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year.

(5) The term "bilateral trade surplus" means, with respect to any foreign country for any year, an excess of—

(A) the aggregate value of nonpetroleum products of such country exported to the United States during such year; over

(B) the aggregate value of nonpetroleum products of the United States imported into such country during such year;

if such excess is at least $3,000,000,000.

(6) The term "bilateral trade surplus limitation" means, with respect to any foreign country for any year, the amount determined by multiplying—

(A) the bilateral trade surplus of such country for the preceding year; by

(B) 90 percent.

(7) The term "nonpetroleum product" means any merchandise other than merchandise classified to division 33 of the Standard International Trade Classification (revision II) published by the United Nations.

(8) The term "value" means—

(A) with respect to merchandise imported into the United States, the customs valuation under the Tariff Act of 1930 of those imports, plus all freight, insurance, and other charges incurred regarding the importation (excluding United States tariffs and import excise taxes), and

(B) with respect to merchandise imported into a foreign country, the transaction prices of such imports plus the freight, insurance, and other charges determined by the Secretary of the Treasury that are incurred in placing the exports alongside the carriers at the United States ports of export.

(9) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(10) The term "entry" includes any withdrawal from warehouse.

(11) The term "best trade data available" means—

(A) with regard to data on the international trade of the United States, official trade information, including the estimates required under section 181, of the United States Government, and

(B) with regard to data on the international trade of any other country, data that the Commission determines is the most reliable data available for the period under consideration, and may include estimates if the actual data required by this section, or the forms of the data required by this section, are not directly available.

(12) Any article that is grown, produced, or manufactured in a country is a product of such country.

(13) Any reference to a year in this section shall be treated as a reference to a calendar year.

(j) TERMINATION OF EFFECT OF SECTION.—Neither this section nor any action taken, or agreement entered into, under the authority of this section shall have force and effect after December 31, 1990.

TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

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SEC. 406. MARKET DISRUPTION.

(a)(1) Upon the filing of a petition by an entity described in section [201(a)(1)] *201(a)*, upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Community country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of [subsections (a)(2), (b)(3), and (c) of section 201] *sections 201(b) and 204(c) and (d)(3)* shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the [President] *United States Trade Representative* its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such articles which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the [President] *United States Trade Representative*. The Commission shall furnish to the [President] *United States Trade Representative* a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the [President] *United States Trade Representative*, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) For purposes of [sections 202 and 203] *section 205*, an affirmative determination of the Commission under subsection (a) shall be treated as an affirmative determination under section [201(b)], *204(a)*, except that—

(1) the [President] *United States Trade Representative* may take action under [sections 202 and 203] *section 205* only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made, and

(2) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the [President] *United States Trade Representative* finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the [President] *United States Trade Representative* further finds that emergency action is necessary, he may take action under section [202 and 203] *205* as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the [President] *United States Trade Representative* under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the [President], *United States Trade Representative,* or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the [President] *United States Trade Representative* pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the [President] *United States Trade Representative* by an entity described in section 201(a)[(1)] requesting the [President] *United States Trade Representative* to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the [President] *United States Trade Representative* determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

[(e) For purposes of this section—

[(1) The term "Communist country" means any country dominated or controlled by communism.

[(2) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.]

(e) For purposes of this section, the term "non-market economy country" means any country dominated or controlled by communism.

(f)(1) For purposes of this section, market disruption exists within a domestic industry whenever an article is being imported into the United States in such increased quantities (either absolutely or relatively) as to be an important cause of material injury or the threat thereof, to the domestic industry providing an article like or directly competitive with the imported article.

(2) In making its determination under paragraph (1), the Commission shall consider, among other factors—

(A) the volume of imports of the merchandise which is the subject of the investigation;

(B) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(C) the impact of imports of such merchandise on domestic producers or like or directly competitive articles; and

(D) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

(3) For purposes of paragraph (2)—

(A) In evaluating the volume of imports of merchandise, the Commission shall consider whether the increase in the volume of imports of the merchandise, either in absolute terms or relative to production or consumption in the United States, is significant.

(B) In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(i) there has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(ii) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(C) In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to—

(i) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity.

(ii) factors affecting domestic prices, and

(iii) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(4) In making its determination under paragraph (1), the Commission shall, where appropriate, cumulate imports from 2 or more non-market economy countries subject to investigation under this section.

(g) The Commission may recommend, in addition to other relief available under this section, a variable tariff based on a comparison of average domestic producer prices and average import prices.

(h) The Trade Representative may deny import relief with respect to imports from a non-market economy country only if the provision of such relief would have a serious negative impact on the domestic economy.

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TITLE V—GENERALIZED SYSTEM OF PREFERENCES

SEC. 501. AUTHORITY TO EXTEND PREFERENCES.

The [President] *United States Trade Representative* may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the [President] *United States Trade Representative* shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

SEC. 502. BENEFICIARY DEVELOPING COUNTRY.

(a)(1) For purposes of this title, the term "beneficiary developing country" means any country [with respect to which there is in effect an Executive order or Presidential proclamation] *which is designated* by the President [of the United States designating such country] *by the United States Trade Representative* as a beneficiary developing country for purposes of this title. Before the President designates any country as a beneficiary developing country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(2) If the President has designated any country as a beneficiary developing country for purposes of this title, he shall not terminate such designation [(either by issuing an Executive order or Presidential proclamation for that purpose or by issuing an Executive order or Presidential proclamation which has the effect of terminating such designation)] unless, at least 60 days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(3) For purposes of this title, the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the [President] *United States Trade Representative* may [by Executive order or Presidential proclamation] provide that all members of such association other than members which are barred from designation under subsection (b) shall be treated as one country for purposes of this title.

(4) For purposes of this title, the term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) No designation shall be made under this section with respect to any of the following:

Australia	Japan
Austria	Monaco
Canada	New Zealand
Czechoslovakia	Norway
European Economic Community member states	Poland
Finland	Republic of South Africa
Germany (East)	Sweden
Iceland	Switzerland
	Union of Soviet Socialist Republics

In addition, the [President] *United States Trade Representative* shall not designate any country a beneficiary developing country under this section—

(1) if such country is a Communist country, unless (A) the products of such country receive nondiscriminatory treatment, (B) such country is a contracting party to the General Agreement of Tariffs and Trade and a member of the International Monetary Fund, and (C) such country is not dominated or controlled by international communism;

(2) if such country is a member of the Organization of Petroleum Exporting Countries, or a party to any other arrangement of foreign countries, and such country participates in any action pursuant to such arrangement, the effect of which is to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and to cause serious disruption of the world economy;

(3) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the [President] *United States Trade Representative* has received assurances satisfactory to him that such preferential treatment will be eliminated before January 1, 1976, or that action will be taken before January 1, 1976, to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, including patents, trademarks, or copyright, unless—

(D) the [President] *United States Trade Representative* determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association; or

(iii) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(5) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) produced, processed, or transported in such country from entering the United States unlawfully;

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(7) if such country aids or abets, by granting sanctuary from prosecution to any individual or group which has committed an act of international terrorism; and

(8) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (5), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the [President] *United States Trade Representative* determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary developing country under this section, the [President] *United States Trade Representative* shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

* * * * * * *

(e)(1) The [President] *United States Trade Representative* may exempt from the application of paragraph (2) of subsection (b) any country during the period during which such country (A) is a party to a bilateral or multilateral trade agreement to which the United States is also a party if such agreement fulfills the negotiating objectives set forth in section 108 of assuring the United States fair and equitable access at reasonable prices to supplies of articles of commerce important to the economic requirements of the United States and (B) is not in violation of such agreement by action denying the United States such fair and equitable access.

(2) The [President] *United States Trade Representative* may exempt from the application of paragraph (2) of subsection (b) any country that enters into a bilateral product-specific trade agreement with the United States under section 101 or 102 of the Trade Act of 1974 before January 3, 1980. The [President] *United States Trade Representative* shall terminate the exemption granted to any country under the preceding sentence if that country interrupts or terminates the delivery of supplies of petroleum and petroleum products to the United States.

SEC. 503. ELIGIBLE ARTICLES.

(a) The [President] *United States Trade Representative* shall, from time to time, publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. [Before any such list is furnished to the Commission, there shall be in effect an Executive order or Presidential proclamation under section 502 designating beneficiary developing countries.] Before any such list is furnished to the Commission, there shall be in effect a designation of beneficiary developing countries under section 502. The provisions of sections 131, 132, 133, and 134 of this Act shall be complied with as though action under section 501 were action under section 101 of this Act to carry out a trade agreement entered into under section 101. After receiving the advice of the Commission with respect to the listed articles, the [President] *United States Trade Representative* shall designate those articles he considers appropriate to be eligible articles for purposes of this title [by Executive order or Presidential proclamation].

(b) The duty-free treatment provided under section 501 with respect to any eligible article shall apply only—

(1) to an article which is imported directly from a beneficiary developing country into the customs territory of the United States; and

(2) If the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any 2 or moe countries which are members of the same association of countries which is treated as one country under section 502(a)(3), plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member countries is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States.

The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this subsection.

(c)(1) The [President] *United States Trade Representative* may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles—

(A) textile and apparel articles which are subject to textile agreements,

[(B) watches,]

(B) watches, except those watches the United States Trade Representative specifically determines, after public notice and comment, will not cause material injury to watch manufacturing and assembly operations in the United States or the United States insular possessions,

(C) import-sensitive electronic articles,

(D) import-sensitive steel articles,

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this title on April 1, 1984,

(F) import-sensitive semimanufactured and manufactured glass products, and

(G) any other articles which the [President] *United States Trade Representative* determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) No article shall be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act or section 232 or 351 of the Trade Expansion Act of 1962.

504. LIMITATIONS ON PREFERENTIAL TREATMENT.

(a)(1) The [President] *United States Trade Representative* may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this title. In taking any action under this subsection, the [President] *United States Trade Representative* shall consider the factors set forth in sections 501 and 502(c).

(2) The [President] *United States Trade Representative* shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 501 and 502(c), and the actions the [President] *United States Trade Representative* has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 502(c).

(b) The [President] *United States Trade Representative* shall, after complying with the requirements of section 502(a)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under section 502(b). Such country shall cease to be a beneficiary developing country on the day on which the [President issues an Executive order or Presidential proclamation revoking] *United States Trade Representative revokes* his designation of such country under section 502.

(c)(1) Subject to paragraphs (2) through (7) and subsection (d), whenever the [President] *United States Trade Representative* determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent ot the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically thereafter, the [President] *United States Trade Representative* shall conduct a general review of eligible articles based on the considerations described in section 501 or 502(c).

(B) If, after any review under subparagraph (A), the [President] *United States Trade Representative* determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the [President] *United States Trade Representative* may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the [President] *United States Trade Representative*—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 501 and 502(c) and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the [President] *United States Trade Representative* shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C)(i) Not earlier than January 4, 1987, the President shall waive the application of this subsection with respect to any eligible article of any beneficiary developing country that—

(I) qualifies for waiver under subparagraphs (A) and (B);

(II) is located in the Western Hemisphere south of the United States;

(III) is determined by the President to have difficulty servicing the debt it owes to foreign or multilateral sources; and

(IV) has not less than 20 percent of the debt that it owes to foreign or multilateral sources held by any combination of United States banks, the International Monetary Fund, and the World Bank.

(ii) The aggregate value of articles to which waivers made under clause (i) may apply for any calendar year may not exceed the aggregate value of the articles with respect to which countries, on the basis of exports during the preceding calendar year, are no longer treated under this subsection as beneficiary developing countries.

(iii) The President shall allocate the aggregate value waived under clause (i) for any calendar year among beneficiary developing countries referred to in that clause. In making any such allocation, and in deciding which eligible articles to which allocation applies, the President shall give great weight to—

(I) the amount of foreign and multilateral debt of each such country, relative to the gross national product of that country;

(II) the estimated percentage of export earnings that each country would be required to devote to servicing foreign and multilateral debt under existing contracts; and

(III) the trade surplus that each country holds with the United States, relative to that country's level of debt outstanding to foreign and multilateral sources.

[(C)] *(D)* Any waiver granted pursuant to this paragraph shall remain in effect until the [President] *United States Trade Representative* determines that such waiver is no longer warranted due to changed circumstances.

[(D)]*(E)*(i) The [President] *United States Trade Representative* may not exercise the waiver authority provided under [subparagraph (A)] *subparagraphs (A) and (C)* with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this title during the preceding calendar year.

(ii) The [President] *United States Trade Representative* may not exercise the waiver authority provided under [subparagraph (A)] *subparagraphs (A) and (C)* with respect to a quantity of eligible articles entered from any beneficiary developing country during any calendar year beginning after 1984 which exceeds 15 percent of the total value of all articles that have entered duty-free under this title during the preceding calendar year if for the preceding calendar year such beneficiary developing country—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this title during the year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the [President] *United States Trade Representative* may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the [President] *United States Trade Representative* determines and publishes in the Federal Register that, with respect to such country—

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 501 and 502, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the [President] *United States Trade Representative* determines, based on the considerations described in sections 501 and 502(c), to be a least-developed beneficiary developing country.

(B) The [President] *United States Trade Representative* shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term "country" does not include an association of countries which is treated as one country under section 502(a)(3), but does include a country which is a member of any such association.

(d)(1) Subsection (c)(1)(B) (after application of subsection (c)(2)) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The [President] *United States Trade Representative* may disregard subsection (c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

(e) No action pursuant to section 501 may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. sec. 1319) on coffee imported into Puerto Rico.

(f)(1) If the [President] *United States Trade Representative* determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent", and

(B) such country shall not be treated as a beneficiary developing country under this title after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means the sum of—

(i) $8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) $8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

(II) The gross national product for 1984.

SEC. 505. TERMINATION OF DUTY-FREE TREATMENT AND REPORTS.

(a) No duty-free treatment provided under this title shall remain in effect after July 4, 1993.

(b) On or before January 4, 1990, the [President] *United States Trade Representative* shall submit to the Congress a full and complete report regarding the operation of this title.

(c) The [President] *United States Trade Representative* shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

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Section 213 of the Caribbean Basin Economic Recovery Act

SEC. 213. ELIGIBLE ARTICLES.

(a)(1) Unless otherwise excluded from eligibility by this title, *and subject to section 261 of the Comprehensive Trade Policy Reform Act of 1986,* the duty-free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered. For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

* * * * * * *

(e)(1) The [President may by proclamation] *United States Trade Representative may* suspend the duty-free treatment provided by this title with respect to any eligible article and may proclaim a duty rate for such article if such action is [proclaimed pursuant to section 203] *provided under chapter 1 of title II* of the Trade Act of 1974 or section 232 of the Trade Expansion Act of 1962.

(2) In any report by the International Trade Commission to the [President under section 201(d)(1)] *United States Trade Representative under section 204* of the Trade Act of 1974 regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this title, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the duty-free treatment provided by this title shall be treated as an increase in duty.

(4) No [proclamation] *import relief* which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be [made under subsections (a) and (c) of section 203] *provided under chapter 1 of title II* of the Trade Act of 1974 unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section [201(b)] *204* of the Trade Act of 1974, determines in the course of its investigation under section [201(b)] *204* of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this title.

(5)(A) Any [proclamation issued pursuant to section 203] *import relief provided under chapter 1 of title II* of the Trade Act of 1974 that is in effect when duty-free treatment pursuant to section 101 of this title is proclaimed shall remain in effect until modified or terminated.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 211, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of [subsections (h) and (i) of section 203] *section 207* of the Trade Act of 1974.

(f)(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the [President] *United States Trade Representative* and recommend that the [President] *United States Trade Representative* take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

* * * * * * *

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the [proclamation] *provision* of import relief pursuant to section [202(a)(1)] *205* of the Trade Act of 1974,

(B) on the day [the President makes a determination pursuant to section 203(b)(2)] *the United States Trade Representative makes a determination under section 206(a)(2)* of such Act not to impose import relief,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

* * * * * * *

TRADE AND TARIFF ACT OF 1984

SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, [and]

(2) the airport located at Pontiac/Oakland, Michigan, and

[(2)] *(3)* any other airport designated by the Secretary of the Treasury under subsection (c).

* * * * * * *

(c) The Secretary of the Treasury may designate [20] airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

* * * * * * *

SEC. 307. NEGOTIATING AUTHORITY WITH RESPECT TO FOREIGN DIRECT INVESTMENT.

(a) * * *

(b)(1) * * *

* * * * * * *

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 123 of the Trade Act of 1974 (19 U.S.C. 2133) for providing compensation for [actions taken under section 203] *import relief provided under chapter 1 of title II* of that Act.

* * * * * * *

SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

(a) * * *

(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title as the "Commission") to the [President under section 201(d)(1)] *United States Trade Representative under section 204* of the Trade Act of 1974 regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

(c) For purposes of [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974, the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under [subsections (a) and (c) of section 203] *chapter 1 of title II* of the Trade Act of 1974 unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974, determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially cause by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974.

(e)(1) Any proclamation issued under [section 203] *chapter 1 of title II* of the Trade Act of 1974 that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 shall remain in effect until modified or terminated.

(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974, the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections [(h) and (i) of section 203] *(a) and (b) of section 207* of the Trade Act of 1974.

SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

(b) Within 14 days after the filing of a petition under subsection (a)—

(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the [President] *United States Trade Representative* and recommend that the [President] *United States Trade Representative* take emergency action; or

(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(c) Within 7 days after the [President] *United States Trade Representative* receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 or publish a notice of his determination not to take emergency action.

(d) The emergency action provided under subsection (c) shall cease to apply—

(1) upon the [proclamation of import relief under section 202(a)(1)] *provision of import relief under chapter 1 of title II* of the Trade Act of 1974;

(2) on the day the [President makes a determination under section 203(b)(2)] *United States Trade Representative makes a*

determination under section 205(a) of such Act not to impose import relief;

(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the [President] *United States Trade Representative* or

(4) whenever the [President] *United States Trade Representative* determines that because of changed circumstances such relief is no longer warranted.

* * * * * * *

(e) For purposes of this section, the term "perishable product" means any—

(1) * * *

* * * * * * *

(5) fresh cut flower provided for in items 192.17, 192.18, and 192.21 of the TSUS; [and]

(6) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS[.]*; and*

(7) Chinese gooseberries provided for in item 149.48 of the TSUS.

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TARIFF ACT OF 1930

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

* * * * * * *

Part II—United States Tariff Commission

SEC. 330. ORGANIZATION OF THE COMMISSION.

(a) * * *

* * * * * * *

(c) CHAIRMAN AND VICE CHAIRMAN; QUORUM.—

[(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph.]

(1) The President shall appoint, by and with the advice and consent of the Senate, the chairman and vice chairman of the Commission from among the members of the Commission not ineligible, under paragraph (3), for appointment.

* * * * * * *

[(3)(A) The President may not designate as the chairman of the Commission for any term—

[(i) either of the two commissioners most recently appointed to the Commission as of the beginning date of the term of office for which the designation of chairman is to be made; or [(ii) any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.]

(3)(A) The President may not appoint as chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member.

(B) The President may not [designate] *appoint* as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall [designate] *appoint* as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. [Designation of a chairman under this subpargraph may be made without regard to the limitation set forth in subparagraph (A)(i).]

* * * * * * *

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—

(1) In a proceeding in which the Commission is required to determine—

(A) under section [201] *204* of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection [(b)(1)] *(a)* of that section (hereafter in this subsection referred to as serious injury), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section [201] *204* or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the [President] *United States Trade Representative* may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section [201(d)(1)] *204(e)* of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a "remedy finding"), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of sections [202 and 203] *205 and 206* of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the [President] *United States Trade Representative* reports under section [203(b)] *206(a)* of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of sections [202 and 203] *205 and 206* of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section [202 and 203] *205 and 206* of such Act, be treated as the remedy finding of the Commission.

* * * * * * *

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section [203(c)(1)] *206(a)(4)* of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the joint resolution described in such section 152(a)(1)(A) shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners ———, ———, and ———." The three blank spaces shall be filled with the names of the appropriate Commissioners.

* * * * * * *

(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

* * * * * * *

SEC. 332. INVESTIGATIONS.

(a) * * *

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(g) REPORTS TO PRESIDENT AND CONGRESS.—The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress[, and shall report to Congress. *However, the Commission may not release information which the Commission considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress*] on the first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

* * * * * * *

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

[(a) UNFAIR: METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to retrain or monopolize trade and commerce in the United States, are declared unlawful and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.]

"(a)(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

"(A) Unfair methods of competiton and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, consignee, or agent of either, the threat or effect of which is—

(i) to destroy or substantially injure an industry, in the United States;

(ii) to impair or prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The unauthorized importation into the United States, or the unauthorized sale within the United States after importation, of articles that—

(i) infringe a valid and enforceable United States patent or a valid United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) The importation into the United States, or the sale within the United States after importation, of articles that infringe a vaild and enforceable United States trademark registered under the Trademark Act of 1946, if the manufacture or production of the article was unauthorized.

(D) The importation of a semiconductor chip product in a manner constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles, patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles, patent, copyright, trademark, or mask work concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

* * * * * * *

(c) DETERMINATION; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, *except that the Commission may, by issuing a consent order or on the basis of a settlement agreement, terminate any such investigation, in whole or in part, without making such a determination.* Each determination under subsection (d) [or (e)], *(e), or (f)* shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defense may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), [or (f)] *(f), or (g)* may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), [and (f)] *(f), and (g)* with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.

* * * * * * *

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—*(1)* If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a de-

termination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the petitioner to post a bond as a prerequisite to the issuance of an order under this subsection.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) with respect to a violation involving a registered trademark, copyright, or mask work or a patent, to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(f) CEASE AND DESIST ORDERS.—(1) In [lieu of] *addition to, or in lieu of,* taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of [$10,000] *$100,000* or the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should be not be found in default; and

(E) the person seeks relief affecting solely that person,

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, which affects only that person *unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.*

(2) A general exclusion from entry of the articles concerned, regardless of the source of importer of the article, may be issued if—

(A) no person appeared to contest an investigation concerning a violation of the provisions of this section, and

(B) such a violation is established by substantial, reliable, and probative evidence.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

[(g)] *(i)* REFERRAL TO THE [PRESIDENT] *United States Trade Representative.*—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the [President] *United States Trade Representative* a copy of such determination and the action taken under subsection (d), (e), [or] (f), *or (g)* with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the [President] *United States Trade Representative,* for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), [or] (f), *or (g)* with respect thereto shall have not force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), [or] (f), *or (g)* with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until such determination becomes final.

(4) If the [President] *United States Trade Representative* does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the [President] *United States Trade Representative* notifies the Commission of his approval, as the case may be.

[(h)] *(j)* PERIOD OF EFFECTIVENESS.—*(1)* Except as provided in subsections (f) and [(g),] *(i),* any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission, on the basis of a contested proceeding, to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), or (g)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

[(i)]*(k)* IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), [or] (f) *or (g),* in cases based on [claims of United States letters patent], *proceeding under subsection (a)(1) (B), (C), or (D)* shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, [a patent owner] *an owner of the patent, copyright, trademark, or mask work* adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Claims Court pursuant to the procedures of section 1498 of title 28, United States Code.

[j]*(l)* DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term United States means the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States.

(m)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is designated as confidential by the person submitting it may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or

(B) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under this section resulting from the investigation in connection with which the information is submitted.

* * * * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * * * *

SEC. 514. FINALITY OF DECISIONS; PROTESTS.—

(a) FINALITY OF DECISIONS.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties [as defined in section 771(9) (C), (D), (E), and (F) of this Act], section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

* * * * * * *

SEC. 516. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) REQUEST FOR CLASSIFICATION AND RATE OF DUTY; PETITION.—(1) * * *

* * * * * * *

(3) Any producer of a raw agricultral product who is considered under section 771(4)(E) to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

* * * * * * *

Part V—Enforcement Provisions

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SEC. 623. BONDS AND OTHER SECURITY.

(a) * * *

* * * * * * *

(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. *In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.*

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TITLE VII

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

Subtitle A—Imposition of Countervailing Duties

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Subtitle B—Imposition of Antidumping Duties

Sec. 731. Antidumping duties imposed.

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Sec. 739. Diversionary dumping.

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Subtitle A—Imposition of Countervailing Duties

*   *   *   *   *   *   *

SEC. 704. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) * * *

*   *   *   *   *   *   *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in [subparagraph (C), (D), (E), and (F) of section 771(9) which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

Subtitle B—Imposition of Antidumping Duties

*   *   *   *   *   *   *

SEC. 734. TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) * * *

*   *   *   *   *   *   *

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or

(2) an interested party described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) which is a party to the investigation, then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in [subparagraph (C), (D), (E), and (F)] *subparagraph (C), (D), (E), (F), or (G)* of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

* * * * * * *

SEC. 739. DIVERSIONARY DUMPING.

(a) DEFINITION OF DUMPED INPUT PRODUCT.—For purposes of this section, the term "dumped input product" means a class or kind of merchandise to which there applies either—

(1) an antidumping duty order issued under section 736(a); or

(2) an international arrangement or agreement described in subsection (c)(2)(B) which was entered into after at least a preliminary affirmative determination under section on 733(b) was made.

(b) IN GENERAL.—If the administering authority finds, during an investigation under this subtitle, that—

(1) a dumped input product is incorporated into, or otherwise used in the manufacture or production of, the merchandise that is the subject of the investigation; and

(2) the manufacturer or producer of such merchandise purchased the dumped input product for a price that is less than the adjusted foreign market value of that product;

the administering authority shall determine the diversionary dumping benefit for the merchandise and apply that benefit in determining the foreign market value of the merchandise under section 773(a).

(c) DIVERSIONARY DUMPING BENEFIT.—

(1) IN GENERAL.—The amount of a diversionary dumping benefit for merchandise is the difference, if any, by which—

(A) the adjusted foreign market value of the dumped input product concerned exceeds

(B) the price for which the manufacturer purchased the dumped input product.

(2) ADJUSTED FOREIGN MARKET VALUE.—The adjusted foreign market value for a dumped input product is—

(A) if an antidumping duty order issued under section 736(a) applies to the product, the foreign market value used to determine the current antidumping duty imposed on the product; or

(B) if the investigation regarding the dumped input product under this subtitle was terminated or suspended because of the entry into force with respect to the United

States of any international arrangement or agreement that contains quantitative restrictions on, or other terms and conditions relating to, the importation into the United States of the product, the foreign market value of the product as determined by the administering authority on the basis of the best available information, including any information gathered in the previous investigation of the dumped input product and the allegations contained in the petition filed with respect to such investigation.

SEC. 740. PRIVATE REMEDY FOR INJURY RESULTING FROM DUMPING.

(a) DEFINITIONS.—For purposes of this section—

(1) The term "court" means the Court of International Trade.

(2) The term "eligible party" means a manufacturer, producer or wholesaler of a product in the United States that is a like product to a class or kind of merchandise with respect to which an antidumping order was issued under section 736.

(3) The term "less than fair value" means the extent to which the foreign market value as defined in section 773 exceeds United States price as defined in section 772.

(b) CAUSE OF ACTION.—

(1) IN GENERAL.—An eligible party that suffers economic loss by reason of the importation and sale at less than fair value by the defendant of merchandise of the class or kind referred to in subsection (a)(2) may bring an action for damages in the court against any of the following:

(A) Any manufacturer of the merchandise.

(B) Any exporter, importer or consignee who knew or had reason to know that the merchandise was sold at less than fair value.

(c) DAMAGES.—

(1) IN GENERAL.—In any action brought under subsection (b), the eligible party, upon a finding of liability on the part of the defendant, is entitled to recover actual damages for the economic loss sustained by the eligible party.

(2) CALCULATION OF DAMAGES.—In calculating damages for purpose of this section, the court shall give regard to economic loss to the eligible party resulting from the importation into the United States and sale of less than fair value merchandise during a period of 3 years the date of the publication of the order referred to in subsection (a)(2).

(d) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an action, may not be brought under this section unless commenced within two years after the date on which the order under section 736 is published in the Federal Register.

(2) TOLLING OF LIMITATION.—The running of the limitations in paragraph (1) shall be suspended while any judicial review or remand of an affirmative determination under subsection (a) or (b) of section 735 is pending and until a decision upon that review is rendered.

(3) An action may not be commenced until more than 30 days after an order under section 736 is published in the Federal Register. If an action is commenced in the court under section

516(A), no action may be brought under this section until the exhaustion of all appeals.

* * * * * * *

Subtitle D—General Provisions

SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) * * *

* * * * * * *

(4) INDUSTRY.—

(A) * * *

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(E) INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.—

(i) IN GENERAL.—In an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers of the raw agricultural product and the producers of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, market value added by the producers, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(II) PROCESS.—For the purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) EVALUATION OF FACTORS.—For purposes of this subparagraph, in evaluating the factors relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if market value added by the producers is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph, the term "raw agricultural product" means any farm, forest, or fishery product.

(5) SUBSIDY.—The term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303 of this Act, and includes, but is not limited to, the following:

(A) Any export subsidy described in Annex A to the Agreement (relating to illustrative list of export subsidies).

(B) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned, and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

[(i) The provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations.

[(ii) The provision of goods or services at preferential rates.]

(i) The provision of capital, loans, loan guarantees, goods, or services at preferential rates or on terms inconsistent with commercial considerations.

[(iii)] *(ii)* The grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry.

[(iv)] *(iii)* The assumption of any costs or expenses of manufacture, production, or distribution.

(C) Any resource input subsidy provided for under section 771B.

* * * * * * *

(7) MATERIAL INJURY.—

(A) * * *

* * * * * * *

(C) EVALUATION OF VOLUME AND OF PRICE EFFECTS.—For purposes of subparagraph (B)—

(i) * * *

* * * * * * *

[(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.]

(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more coun-

tries of like products if such imports compete with each other, and with like products of the domestic industry, in the United States market, and if such imports—

(I) are subject to any investigation under section 303, 701, or 731;

(II) are subject to any final order or suspension agreement resulting from an investigation under section 303, 701, or 731; or

(III) were entered before any quantitative restraint was imposed on the importation of like products, if such restraint was the basis on which a petition filed under section, 303, 701, or 731 was withdrawn after the administering authority made an affirmative preliminary determination on the petition.

Subclauses (II) and (III) apply only if the order, agreement, or restraint concerned came into effect within the 12-month period ending on the date the investigation with respect to which this clause is being applied is initiated.

* * * * * * *

[(E) SPECIAL RULES.—For purposes of this paragraph—

[(i) NATURE OF SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

[(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.]

(E) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant economic factors—

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement), *Provided by a* *foreign country and effects likely to be caused by the subsidy,*

* * * * * * *

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, **[**and**]**

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to find orders under section 706 or 736, are also used to produce the merchandise under investigation**[**.**]***,*

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that an affirmative determination by the Commission with respect to either the raw agricultural product or the processed agricultural product (but not both) would result in an increase in the imports of the other agricultural product to an injurious level, and

(X) any government plan or scheme consisting of a combination of coordinated government actions, whether carried out severally or jointly, that are bestowed on a specific enterprise, industry, or group thereof the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of the merchandise; and

(XI) the extent to which the United States is a focal point for exports of the merchandise by reason of restraints on exports of the merchandise to, or on imports of the merchandise into, third country markets

* * * * * * *

(iii) CUMULATION.—To the extent practicable, for purposes of clause (i) (III) and (IV), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products if such imports—

(I) compete with each other, and with like products of the domestic industry, in the United States market; and

(II) are subject to any investigation under section 303, 701, 731.

(iv) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—In investigations under subtitle B, the Commission shall consider whether dumping in third country

markets, as evidenced by findings or antidumping remedies in other GATT member markets against the same class of kind of merchandise manufactured or exported by the same party as under investigation, suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue. If the foreign manufacturer, exporter, or United States importer does not provide specific and convincing information to establish that there is no threat of injury to the United States industry, then the Commission may draw adverse inferences. For purposes of this clause, the term "GATT member market" means any country which is a signatory to The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (relating to antidumping measures), and the European Community shall be treated as being one country.

(G) SPECIAL RULES FOR FUNGIBLE PRODUCTS.—

(i) IN GENERAL.—The Commission shall not determine that there is no material injury, or no threat of material injury, to United States producers of a fungible product by reason of imports (or sales or offers of sale for importation) of that fungible product solely on the basis of evidence that—

(I) sales or offers of sale of the imported merchandise were not the first sales or offers at a reduced price in the relevant market;

(II) price declines of similar magnitude occurred in other comparable markets (including submarkets or localities) where there is a relationship between the prices in such markets and the prices in the import impacted market;

(III) United States producers also import the merchandise under investigation; or

(IV) United States producers of the product are profitable

(ii) DEFINITION.—For the purposes of this clause, the term "fungible product" means merchandise sold by weight or volume without significant product differentiation in such merchandise whether produced by foreign or domestic producers.

*   *   *   *   *   *   *

(9) INTERESTED PARTY.—The term "interested party" means—

(A) * * *

*   *   *   *   *   *   *

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, [and]

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product[.], *and*

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either processors or processors and producers.

* * * * * * *

(18) APPLICATION TO GOVERNMENTAL IMPORTATIONS.—Merchandise imported by, or for the use of, an agency of the United States Government is not exempt from the imposition of countervailing duties or antidumping duties under this title.

* * * * * * *

SEC. 771B. RESOURCE INPUT SUBSIDIES.

(a) GENERAL RULE.—A resource input subsidy exists if—

(1) a product (hereinafter referred to in this section as an "input product")—

(A) is provided or sold by a government or a government-regulated or controlled entity within a country (hereinafter referred to in this section as "exporting country"), for input use within that country, at a domestic price that—

(i) is lower than the fair market value of the input product; and

(ii) is not freely available, by reason of government regulation or control, to United States producers for purchase of the input product for export to the United States; and

(B) would, if sold at the fair market value, constitute a significant portion of the total cost of the manufacture or production of the merchandise in or for which the input product is used; or

(2) the right to remove or extract a product (hereinafter in this section referred to as the "removal right") is provided or sold by a government or a government-regulated or controlled entity within a country and—

(A) that product is for input use within that country;

(B) the removal right is provided or sold at a domestic price that is lower than the fair market value of that right, and

(C) the product to which the removal right applies would, if that right was sold at a fair market value, constitute a significant portion of the total cost of the manufacture or production of the merchandise in or for which the product is used.

(b) AMOUNT OF RESOURCE INPUT SUBSIDIES.—

(1) IN GENERAL.—The amount of a resource input subsidy is the difference between the domestic price of an input product, or of a removal right, and the fair market value of that product, or right, respectively.

(2) EXCLUSIONS.—For purposes of this section, the terms "domestic price" and "fair market value" do not include, with re-

spect to an imput product, the costs incident to the transportation and handling required to move the product from its point of production to the respective domestic or foreign destination.

(c) DEFINITIONS AND RULES.—For purposes of this section—

(1) FAIR MARKET VALUE.—The term "fair market value" means—

(A) with respect to an input product, the price that, in the absence of government regulation of control, a willing buyer would pay a willing seller for that product from the exporting country in an arms-length transaction; and

(B) with respect to a removal right, the price that, in the absence of government regulation or control, a willing buyer would pay a willing seller in an arms-length transaction for the removal right in the country providing or selling the right.

(2) RULES FOR INPUT PRODUCTS.—In determining the fair market value of an input product, the administering authority shall take into account—

(A) the export price of the product;

(B) the prices at which the product is generally available in world markets;

(C) the current market clearing price at which the product can be sold competitively by the exporting country in the markets of other countries (including the United States) that are non-State-controlled-economy-country markets; and

(D) the availability to the exporting country of markets described in paragraph (C).

(3) RULES FOR REMOVAL RIGHTS.—In determining the fair market value of a removal right, the administering authority shall take into account——

(A) the price paid in the exporting country for a comparable removal right not subject to government regulation or control;

(B) the price paid in the exporting country for a comparable removal right sold or offered for sale through a process of competitive bidding; and

(C) the price paid for a comparable removal right in comparable regions of countries other than the exporting country.

(4) INPUT USE.—The term "input use" refers to the use (directly or indirectly) of an imput product in the manufacture or production of any class or kind of merchandise that is the subject of an investigation under this title.

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SEC. 773. FOREIGN MARKET VALUE.

(a) DETERMINATION; FICTITIOUS MARKET; SALES AGENCIES.—For purposes of this title—

(1) IN GENERAL.—The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) with respect to such person—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

(B) if not so sold or offered for sale for home consumption, or if the administering authority determines that the quantity sold for home consumption is so small in relation to the quantity sole for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States,

increased [by,] *by the amount of any diversionary dumping benefit determined under section 739(a) and by,* when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

* * * * * * *

SEC 777. ACCESS TO INFORMATION.

(a) * * *

(b) CONFIDENTIAL INFORMATION.—

(1)(A) * * *

(B) either—

(i) a statement which permits the administering authority to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

[(ii) a statement that the information should not be released under administrative protective order.]

(ii) a statement to the administering authority that certain types of business proprietary, privileged, or classified information should not be released under administrative protective order, or a statement to the Commission that information should not be released under administrative protective order.

* * * * * * *

(c) LIMITED DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

[(A) IN GENERAL.—Upon receipt of an application, (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).]

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority shall make all confidential information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and information of a type which the administering authority determines should not be released under administrative protective order) available under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. The Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

* * * * * * *

(C) TIME LIMITATION.—The administering authority shall determine whether to make information available under this paragraph not later than 14 days (or 21 days if the statements described in subsection (b)(1)(B)(ii) are submitted with such information) after the date on which an application for disclosure is submitted under subparagraph (A). If the determination is affirmative, confidential information already submitted to the administering authority shall be made available, subject to the terms and conditions of the protective order, on the date such determination occurs. Confidential information submitted to the administering authority after such determination shall be served as required by subsection (d).

(D) FAILURE TO DISCLOSE.—If a person submitting information refuses to disclose confidential information (except privileged information, classified information, or information of a type which the administering authority determines should not be released under protective order) pursuant to a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting it and shall not consider them.

* * * * * * *

(d) SERVICE.—Any party submitting information to the administering authority during a proceeding shall, at the same time, serve information upon all other parties to the proceeding. The administering authority shall not accept any such information that is not accompanied by a certificate of service. Confidential information shall only be served upon parties that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other parties.

(e) Notification.—The administering authority shall, within 14 days of receipt, notify all parties of the submission of information relevant to the proceeding by a person who is not a party to the proceeding.

(f) Timely Submission.—Information shall be submitted to the administering authority during the course of a proceeding on a timely basis and shall be subject to comment by other parties within such reasonable time as the administering authority shall provide. If information is submitted without an adequate opportunity for other parties to comment thereon, the administering authority shall return the information to the party submitting it and shall not consider it.

* * * * * * *

SEC. 779. [DRAWBACKS.] *DRAWBACK TREATMENT.*

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title [shall be treated as any other customs duties.] *may not be treated as being regular customs duties.*

SEC. 780. DOWNSTREAM PRODUCT MONITORING.

(a) Definitions.—As used in this section—

(1) The term "component part" means an imported article that—

(A) during the 5-year period before the date on which a petition is filed under subsection (b) has been subject to—

(i) an order issued under this title imposing a countervailing duty or antidumping duty of 15 percent ad valorem or higher, or

(ii) an agreement entered into under section 704 or 734 after a preliminary affirmative determination under section 703(b) or 733(b)(1) was made involving an estimated net subsidy or net dumping margin of 15 percent ad valorem or higher; and

(B) because of its inherent characteristics is routinely used as a major part, component, assembly, subassembly, or material in other manufactured articles.

(2) the term "downstream product" means any imported manufactured article into which is incorporated any component part.

(b) Petition Requesting Monitoring.—

(1) In General.—A domestic producer of an article that is like a component part of a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (c). The petition shall specify—

(A) the downstream product;

(B) the component product incorporated into such downstream product; and

(C) reasons for suspecting the likely diversion, as a result of the imposition of antidumping or countervailing duties, of exports of the component part to the United States into increased production and exportation to the United States of such downstream product.

(2) Action on petitions.—Within 14 days after receiving a petition, the administering authority shall determine whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to component parts. In making such a determination, the administering authority may, if appropriate, take into account such factors as—

(A) the value of the component part in relation to the value of the downstream product;

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product; and

(C) the relationship between the producers of component parts and producers of downstream products.

(3) Publication of determination.—The administering authority shall publish notice of each determination under paragraph (2) in the Federal Register.

(4) Determinations not subject to judicial review.—A determination by the administering authority under paragraph (2) is not subject to judicial review.

(c) ITC Monitoring.—

(1) Notice to itc.—The administering authority shall immediately inform the Commission of an affirmative determination under subsection (b)(2) regarding a downstream product.

(2) Monitoring.—The Commission shall immediately commence the monitoring of the levels of trade in downstream products regarding which notice is received under paragraph (1). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in that product sector.

(3) Reports.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses undertaken under paragraph (2). The Commission shall make the reports available to the public.

(d) Action on Basis of Monitoring Reports.—The administering authority shall review the information in the reports prepared by the Commission under subsection (d) and—

(1) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product; and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

SEC. 781. CERTIFICATION OF SUBMISSIONS.

Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

ACT OF JULY 2, 1940

[TO LIMIT THE IMPORTATION OF PRODUCTS MADE, PRODUCED, PROCESSED, OR MINED UNDER PROCESS COVERED BY UNEXPIRED VALID UNITED STATES PATENTS, AND FOR OTHER PURPOSES.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the importation hereafter for use, sale, or exchange of a product made, produced, processed, or mined under or by means of a process covered by the claims of any unexpired valid United States letters patent, whether issued heretofore or hereafter, shall have the same status for the purposes of section 337 of the Tariff Act of 1930 as the importation of any product or article covered by the claims of any unexpired valid United States letters patent.]

TRADE EXPANSION ACT OF 1962

* * * * * * *

TITLE II—TRADE AGREEMENTS

* * * * * * *

CHAPTER 4—NATIONAL SECURITY

* * * * * * *

SEC. 232. SAFEGUARDING NATIONAL SECURITY.

(a) * * *

(b)*(1)* Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of the Treasury (hereinafter referred to as the "Secretary") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from, and shall consult with, the Secretary of Defense, the Secretary of Commerce, and other appropriate officer of the United States, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within [one year] *90 days (180 days if the Secretary determines that the investigation is extraordinarily complicated)* after receiving an application from an interested party or otherwise beginning an investigation under this subsection. [If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.]

(2) If the Secretary finds under paragraph (1) that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall advise the President of the finding in the report required under paragraph (1). Within 60 days after receiving the report, the President shall—

(A) determine whether he concurs with the advice of the Secretary;

(B) if he concurs, determine the nature and duration of the action that, in his judgment, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security; and

(C) report in writing to the Congress the reasons for the determination under subparagraph (A), or under both subparagraphs (A) and (B), as the case may be.

(3) If the President determines under paragraph (2)(B) to take action to adjust imports of an article and its derivatives, the President shall implement that action no later than the 15th day after the day on which he determines to take action under paragraph (2)(B).

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CHAPTER 5—ADMINISTRATIVE PROVISIONS

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SEC. 242. INTERAGENCY TRADE ORGANIZATION.

[(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections 201, 202, and 203 of the Trade Act of 1974. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.]

(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by the trade laws and to advise the United States Trade Representative in carrying out his functions under section 141 of the Trade Act of 1974. Such organization shall be composed of the following:

(1) The Trade Representative, who shall be chairperson.

(2) The Secretary of Commerce.

(3) The Secretary of State.

(4) The Secretary of the Treasury.

(5) The Secretary of Agriculture.

(6) The Secretary of Labor.
The Trade Representative may invite representatives from other agencies, as appropriate, to attend particular meetings if subject matters of specific functional interest to such agencies are under consideration. It shall meet at such times and with respect to such matters as the President or the Chairman shall direct.

* * * * * * *

SECTION 805 OF THE STEEL IMPORT STABILIZATION ACT

SEC. 805. ENFORCEMEMT AUTHORITY.

(a) * * *

* * * * * * *

(c) Any steel product that is manufactured in a country that is not party to a bilateral arrangement from steel which was melted and poured in a country that is party to a bilateral arrangement (hereinafter in this subsection referred to as a "arrangement country") will be treated for purposes of the quantitative restrictions under that arrangement as if it were a product of the arrangement country.

(2) If the Customs Service in applying paragraph (1), is provided with valid documentation of the nature and amount of the steel product exported by an arrangement country to a country that—

(1) is not an arrangement country; and

(2) has transformed the product for export to the United States;

the Customs Service shall treat such documented product, for purposes of enforcing quantitive restrictions, as if it were a product of the arrangement country.

[(c)] *(d)* For purposes of carrying out this title, the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States.

TARIFF SCHEDULES OF THE UNITED STATES

* * * * * * *

3. *Rates of Duty.*—The rates of duty in the "Rates of Duty" columns numbered 1 and 2 and the column designated Special of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

(a) *Products of Insular Possessions.*

(i) Except as provided in headnote 6 of subpart E of part 2 of schedule 7, and except as provided in headnote 3 of subpart A of part 7 of schedule 7, *and except as provided in section 261 of the Comprehensive Trade Policy Reform Act of 1986,* articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 perent of their total value with respect to articles described in section 213(b) of the Caribbean Basin Economic Recovery Act), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

* * * * * * *

SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

Item	Articles	Rates of duty		
		1	Special	2
	PART 4.—DAIRY PRODUCTS; BIRDS' EGGS			
	* * * *	*	*	*
	Subpart D.—Other Milk Products			
	* * * *	*	*	*
[118.45	Milk protein concentrate	0.2¢ per lb.	Free (A,E,I)	5.5¢ per lb.]
	Casein, caseinates, and milk protein concentrate for human food and animal feed use:			
118.46	*Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported.*	*1.3¢ per lb.*		*5.5¢ per lb.*
118.48	*Other*	*0.2¢ per lb.*		*5.5¢ per lb.*

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PART 5.—HIDES, SKINS, AND LEATHER; FURSKINS

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Subpart B.—Furskins

Subpart B headnotes:

1. * * *

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[4. The entry, or withdrawal from warehouse, for consumption of ermine, fox, kolinsky, marten, mink, muskrat, and weasel furskins, raw or not dressed, or dressed, which are the product of the Union of Soviet Socialist Republics is prohibited.]

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PARTS 9.—EDIBLE NUTS AND FRUITS

* * * * * * *

Item	Articles	Rates of duty 1	Rates of duty Special	Rates of duty 2
	Subpart B.—Edible Fuits			
	* * * *	*	*	*
	Plums, prunes, and prunelles, fresh, or prepared or preserved:			
	Fresh:			
	* * * *	*	*	*
149.26	[Dried] *Dried, salted, or not salted but not otherwise futher prepared.*	2¢ prt lb.	Free (E,I)	2¢ per lb.
[149.28	Otherwise prepared or preserved	17.5% ad val.	Fee (E) 14% ad val. (I).	35% ad val.]
	[In airtight containers			
	[Not in airtight containers			
	Otherwise prepared or preserved:			
149.30	*Plums soaked in brine and dried*	*2¢ per lb.*		*2¢ per lb.*
149.31	*Other*	*17.5% ad val.*		*35% ad val.*
	* * * *	*	*	*
	PART 12. BEVERAGES			
	* * * *	*	*	*
	Subpart A.—Fruit Juices			
	* * * *	*	*	*
	Fruit juices, including mixed fruit juices, concentrated or not concentrated, whether or not sweetened:			
	Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:			
165.15	Apple or pear	Free		5¢ per gal.
165.25	Citrus fruit:			
	Lime	10¢ per gal.	Free (E) 8¢ per gal. (I)	70¢ per gal.
	Not concentrated			
	Concentrated			
	Orange:			
165.27	Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).	20¢ per gal.	Free (E) 8¢ per gal. (I)	70¢ per gal.
165.29	Other	35¢ per gal.	Free (E)	70¢ per gal.
	Grapefruit:			
165.31	*Not concentrated and not made from a juice having a degree of concentration of 1.5 or more (as determined before correction to the nearest 0.5 degree).*	*20¢ per gal.*		*70¢ per gal.*
165.34	*Other*	*35¢ per gal.*		*70¢ per gal.*
[165.32] *165.37*	Not concentrated	20¢ per gal.	Free (E)	70¢ per gal.
[165.36] *165.38*	Concentrated	35¢ per gal.	Free (E)	70¢ per gal.
	Lemon	20¢ per gal.	Free (E)	70¢ per gal.
	Other	35¢ per gal.	Free (E)	70¢ per gal.
	* * * *	*	*	*
	PART 15.—OTHER ANIMAL AND VEGETABLE PRODUCTS			
	* * * *	*	*	*
	Subpart D.—Feathers, Downs, Bristles, and Hair			
	* * * *	*	*	*
186.20	Fur, not on the skin, prepared for hatters' [use, and carroted furskins] *use.*	[15% ad val.]	Free (A,E 12% ad val. (I).	35% ad val.
186.22	*Carroted furskins*	*15% ad val.*		*35% ad val.*
	* * * *	*	*	*

SCHEDULE 2.—WOOD AND PAPER; PRINTED MATTER

* * * * * * *

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	PART 3.—WOOD VENEERS, PLYWOOD AND OTHER WOOD-VENEER ASSEMBLIES, AND BUILDING BOARDS			

Part 3 headnotes:

1. For the purposes of this part, the following terms have the meanings hereby assigned to them:
   (a) * * *
   (b) Plywood: Rigid wood-veneer assemblies bonded together with adhesive substances having a centrol ply or care of wood veneer or lumber with one or more piles of wood veneer on each side thereof, the grain of at least one ply being at an angle (usually a right angle) with the gain of one or more of the other plies including such assemblies the face (ply or plies) of which has been mechanically scored, striated, or similarly processed *or any edge of which has been tongued, grooved, lapped, or otherwise worked;*
   (c) Wood-veneer panels: Rigid wood-veneer assemblies, bonded together with adhesive substances, except plywood, with a wood-veneer ply on one side of a backing, or on both sides of a core, which backing or core may be composed of lumber, veneer, hardboard, wood particle board, or other material, including such assemblies the face ply (or plies) of which has been mechanically scored, striated, or similarly processed *or any edge of which has been tongued, grooved, lapped, or otherwise worked;*

* * * * * * *

   (e) Building boards; Panels of rigid contstruction; including tiles and insulation board, *other than plywood, wood-veneer panels, or cellular panels,* chiefly used in the construction of walls, cellings, or other parts of buildings.

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PART 5.—BOOKS, PAMPHLETS, AND OTHER PRINTED AND MANUSCRIPT MATERIAL

* * * * * * *

Item	Articles	1	Special	2
	Printed catalogs relating chiefly to current offers for the sale of United States products:			
[270.45] *270.46*	Wholly or almost wholly of foreign authorship.	0.2% ad val.	Free (A,D,E,I,).	15% ad val.
[270.50] *270.48*	Other	0.4% ad val.	Free (A,D,E,I)..	25% ad val.

* * * * * * *

Item	Articles	1	Special	2
270.90	*Catalogs of films, recordings, or other visual and auditory material of an educational, scientific, or cultural character.*	*Free*		*Free*

* * * * * * *

Item	Articles	1	Special	2
	[Architectural, engineering, industrial, or commercial drawings and plans, whether originals or reproductions printed on sensitized materials by any photographic process:			
[273.45	Produced over 20 years before importation	Free		Free
	Produced not over 20 years before importation:			
[273.50	Suitable as designs for use in the manufacture of floor coverings, textiles, wall coverings, or wall paper.	1.4% ad val.	Free (A,E,I)	20% ad val.
[273.55	Other	0.5% ad val.	Free (A,D,E,I)..	25% ad val.]

Item	Articles	Rates of Duty 1	Special	2
273.52	*Architectural, engineering, industrial, or commercial drawings and plans whether originals or reproductions.*	*Free*		*Free*
	* * * *	*	*	*
	Photographs *(including developed photographic film; photographic slides; transparencies; holograms for laser projection; and microfilm, microfiches and similar articles except those provided for in item 737.52)*, engravings, etchings, lithographs, and wood cuts, and pictorial matter produced by relief or stencil printing process, all the foregoing, whether bound or not bound, and not specially provided for:			
274.50	Printed over 20 years at time of importation	Free		Free
	Printed not over 20 years at time of importation:			
274.55	***Loose illustrations, reproduction proofs or reproduction films used for the production of books***	***Free***		***Free***
274.56	***Articles provided for in items 270.05, 270.10, 270.25, 270.55, 270.63, 270.70, and 273.60 in the form of microfilm, microfiches, and similar film media***	***Free***		***Free***
274.60	Lithographs on paper: Not over 0.020 inch in thickness	6¢ per lb.	Free (A, E, I)	50¢ per lb.
	Posters			
	Other			
274.65	Over 0.020 inch in thickness	Free		8.75¢ per lb. + 25% ad val.
274.70	Other	3.2% ad val.	3.1% ad val. (D) Free (A,E,I)	
	Posters			
	Other			

* * * * * * *

SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

* * * * * * *

Item	Articles	Rates of Duty 1	Special	2
	PART 3.—WOVEN FABRICS			

* * * * * * *

Item	Articles	Rates of duty 1	Special	2
	Subpart E.—Woven Fabrics of Man-Made Fibers			
*	* * * *	*	*	*
[338.50	Other	2¢ per lb. + 17.9% ad val.	1.4¢ per lb. + 12.5% ad val. (I).	81% ad val.

Suitable for making typewriter and machine ribbon, containing yarns the average denier of which exceeds 25 but not 75, the total thread count (treating multiple (folded) or cabled yarns as *single threads) of which per inch is not* less than 150 warp and 100 filling and not more than 210 warp and 140 filling and in which the thread count of the warp does not exceed 60 percent of the total thread count of the warp and filling:
- Slit, with fast edges (614)
- Other (614)

Other, wholly of continuous fibers (including continuous man-made filaments or strips):
- Woven fabrics obtained from high tenacity yarn of nylon, polyester, or viscose rayon:
  - Of nylon or polyester (612)
  - Of viscose rayon (610)
- Woven fabrics obtained from non-cellulosic man-made fiber strips (612)
  - Other, weighing not over 5 oz. per square yard:
  - Containing 85 percent or more by weight of rayon or acetate:
    - Flat fabrics, not textured (610)
    - Other (610)
  - Containing 85 percent or more by weight of nylon:
    - Flat fabrics, not textured (612)
    - Other (612)
  - Containing 85 percent or more by weight of polyester:
    - Flat fabrics, not textured:
      - Unbleached or bleached (612)
      - Other (612)
    - Flat fabrics, textured:
      - Unbleached or bleached (612)
      - Other (612)
    - Other, not textured:
      - Unbleached or bleached (612)
      - Dyed (612)
      - Of yarns of different colors (612)
      - Printed (612)
    - Other, textured:
      - Unbleached or bleached (612)
      - Dyed (612)
      - Of yarns of different colors (612)
      - Printed (612)
  - Other (612)
- Other, weighing over 5 oz. per square yard:
  - Containing 85 percent or more by weight of rayon or acetate (610)
  - Containing 85 percent or more by weight of nylon:
    - Flat fabrics, not textured (612)
    - Other (612)
  - Containing 85 percent or more by weight of polyester:
    - Flat fabrics, not textured:
      - Unbleached or bleached (612)
      - Other (612)
    - Flat fabrics, Textured:
      - Unbleached or bleached (612)
      - Dyed (612)
      - Of yarns of different colors (612)
      - Printed (612)
    - Other, not textured:
      - Unbleached or bleached (612)
      - *Other (612)*
    - Other, textured:
      - Unbleached or bleached (612)
      - Other (612)

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2
	Other (612)			
	Other, combinations and mixtures of filament and spun yarns, weighing not more than 5 ounces per square yard, of polyester (except fabrics of polyester, mixed mainly or solely with cotton or mixed mainly or solely with rayon), measuring less than 30 inches in width or less than 30 inches between selvages, with over 120 warp yarns per inch, of a kind for use in the manufacture of neckties (614)			
	Other, weighing not more than 5 oz. square yard:			
	Cheesecloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Poplin or broadcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (614)			
	Printcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other, containing 85 percent or more by weight of noncellulosic man-made fibers (613)			
	Other (613)			
	Other (614)			
	Sheeting:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (613)			
	Other (614)			
	Batistes, lawns, or voiles:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (613)			
	Other (614)			
	Sateens or twills:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Twills (613)			
	Sateen (613)			
	Other (614)			
	Oxford cloth:			
	Wholly of spun yarns			
	Of rayon or acetate (611)			
	Other:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (614)			
	Other:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other, weighing more than 50 oz. per square yard:			

Item	Articles	Rates of duty 1	Special	2
	Duck:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Poplin or broadcloth:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton (613)			
	Other (613)			
	Other (614)			
	Sheeting:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (613)			
	Other (614)			
	3-thread or 4-thread twill (including broken twill), warp faced, of yarns of different colors, the filling yarns of which are not of different colors:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other twill (including cross twill):			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other:			
	Of man-made fibers, mixed mainly or solely with cotton:			
	Of yarns of different colors (613)			
	Other (613)			
	Other (613)			
	Other (614)			
	Sateens:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)			
	Other:			
	Wholly of spun yarns:			
	Of rayon or acetate (611)			
	Other (613)			
	Other (614)]			
338.60	*Containing 85% of more by weight of continuous man-made fibers.*	*2¢ per lb. + 17.9% ad val.*	....	*81% ad val.*
	Other:			
338.70	*Weighing not more than 5 oz. per square yard.....*	*2¢ per lb. + 17.9% ad val.*	....	*81% ad val.*
338.80	*Other..*	*2¢ per lb. + 17.9% ad val.*	....	*81% ad val.*

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SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

* * * * * * *

Item	Articles	Rates of duty 1	Special	2
	PART 2.—CHEMICAL ELEMENTS INORGANIC AND ORGANIC COMPOUNDS, AND MIXTURES			

* * * * * * *

Item	Articles	Rates of Duty 1	Special	2
	Subpart C.—Inorganic Chemical Compounds			
*	* * *	*	*	*
	Uranium compounds:			
422.50	Oxide	Free		Free
	Hexafluoride (UF_6):			
422.51	*If imported for use in reactors in the United States and a product of a country that requires that uranium mined in that country be converted or upgraded into uranium hexafluoride (UF_6)* before export	*$3 per lb.*		*$3 per lb.*
422.53	*Other*	*Free*		*Free*
[422.52] *422.54*	Other	Free		Free
	Fluorides			
	Other			
*	* * *	*	*	*

PART 4.—SYNTHETIC RESINS AND PLASTICS MATERIALS; RUBBER

Subpart A.—Synthetic Resins and Plastics Materials

Subpart A headnotes:

1. This subpart does not cover synthetic plastics materials [provided for in part 1C], *other than silicones, provided for in part 1* of this schedule, but the addition of any product described in part 1 of this schedule to a synthetic plastics material described in this subpart as an antioxidant, color, dispersing agent, emulsifier, extender, filter, pesticide, plasticizer, or stabilizer does not affect the classification of such synthetic plastics material in this subpart.

[2. The term *"synthetic plastic materials"*, in this subpart, embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added. These products contain as an essential ingredient an organic substance of high molecular weight; are capable, at some stage during processing into finished articles, of being molded or shaped by flow; and are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid; vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins; urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, allyl, and formaldehyde resins, and cellulosis plastics materials. These synthetic plastics materials may be in solid, semi-solid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.]

2. (a) The term "synthetic plastics materials" in this subpart—

(i) embraces products formed by the condensation, polymerization, or copolymerization of organic chemicals and to which an antioxidant, color, dispersing agent, emulsifier, extender, filler, pesticide, plasticizer, or stabilizer may have been added; and

(ii) includes silicones (including fluids, resins, elastomers, and copolymers) whether or not such materials are solid in the finished articles.

Item	Articles	Rates of duty 1	Rates of duty Special	Rates of duty 2

(b) The products referred to in (a) contain as an essential ingredient an organic substance of high molecular weight; and, except as provided in (a)(ii) of this headnote, are capable, at some stage during processing into finished articles, of being molded or shaped by flow and are solid in the finished article. The term includes, but is not limited to, such products derived from esters of acrylic or methacrylic acid; vinyl acetate, vinyl chloride resins, polyvinyl alcohol, acetals, butyral, formal resins, polyvinyl ether and ester resins, and polyvinylidene chloride resins; urea and amino resins; polyethylene, polypropylene, and other polyalkene resins; siloxanes, silicones, and other organo-silicon resins; alkyd, acrylonitrile, allyl, and formaldehyde resins, and cellulosic plastics materials. These synthetic plastic materials may be in solid, semisolid, or liquid condition such as flakes, powders, pellets, granules, solutions, emulsions, and other basic crude forms not further processed.

* * * * * * *

Item	Articles	1	Special	2
445.54	Polytetrafluoroethylene (PTFE) resins	0.7¢ per lb. + 6.2% ad val..	0.7¢ per lb. + 5.7% ad val. (D) Free (A,E,I).	33.5% ad val.
445.55	*Silicone resins and materials*	*3.9% ad val.*	*3.7% ad val.*	*25% ad val.*
[445.56] *445.60*	Other	1¢ per lb. + 8% ad val..	1¢ per lb.+7.7% ad val. (D) Free (A,E,I).	33.5% ad val.
	Thermoplastic resins:			
	Polyacetal			
	Polyamide, non-nylon type			
	Polyterpene			
	Other			
	Thermosetting resins:			
	Dicyanidamide (cyanoguanidine) resins.			
	Furan (furfuryl type) resins			
	Silicone resins			
	Other			

* * * * * * *

Subpart B.—Rubber

Subpart B. headnotes:

1\. * * *

2\. (a) For the purposes of the tariff schedules, the term "rubber" means a substance, whether natural or synthetic, in bale, crumb, powder, latex, or other crude form, that—

(i) can be vulcanized or otherwise cross-linked, and

(ii) after cross-linking can be stretched at 68°F. to at least three times its original length and that, after having been stretched to twice its original length and the stress removed, returns within 5 minutes to less than 150 percent of its original length.

(b) For purposes of the Tariff Schedules other than schedule 4, the term "rubber" also means any substance described in subdivision (a) that also contains fillers, extenders, pigments, or rubber-processing chemicals, whether or not such substance, after the addition of such fillers, extenders, pigments, or chemicals, can meet the tests specified in clauses (i) and (ii) of subdivision (a).

(c) For the purposes of the tariff schedules, the term "rubber" does not include silicones.

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PART 10 PETROLEUM, NATURAL GAS, AND PRODUCTS DERIVED THEREFROM

Part 10 headnotes:

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2

1. Any product described in this part and also in part 1 of this schedule is classifiable in said part 1, except *motor fuel blending stocks,* fuel oils, motor fuel, and lubricating oils and greases, containing by weight not over 25 percent of any product described in said part 1. This part does not cover—
   (i) paraffin and other petroleum waxes (see part 13B of this schedule), or
   (ii) petroleum asphalts (see part 1J of schedule 5).
2. For the purposes of this part—
   (a) "Reconstituted crude petroleum" (items 475.05 and 475.10) is a product which is essentially the equivalent of crude petroleum and which is made by adding fuel oil, naphtha, or other petroleum fractions to crude or topped crude petroleum; [and]
   (b) "Motor fuel" (item 475.25) is any product derived primarily from the petroleum, shale, or natural gas, whether or not containing additives, which is chiefly used as a fule in internal-combustion or other engines[.]; *and*
   (c) "Motor fuel blending stock" (item 475.27) means any product (except naphthas provided for in item 475.35) derived primarily from petroleum, shale oil, or natural gas, whether or not containing additives, to be used for direct blending in the manufacture of motor fuel.

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Item	Articles	1	Special	2
	475.27 *Motor fuel blending stocks*	*1.25¢ per gal.* *2.5¢ per gal.*		
	475.30 Kerosene derived from petroleum, shale oil, or both (except motor [fuel] *fuel or motor fuel blending stocks).*	0.25¢ per gal. Free (I) 0.5¢ per gal..		

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PART 13.—FATTY SUBSTANCES, CAMPHOR, CHARS AND CARBONS, ISOTOPES, WAXES, AND OTHER PRODUCTS

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Subpart B.—Camphor, Chars and Carbons, Isotopes, Waxes, and Other Products

*　　*　　*　　*　　*　　*　　*

Item	Articles	1	Special	2
	[Casein and mixtures in chief value thereof (other than a product described in item 118.45):] *Casein and mixtures in chief value of casein (other than a product described in 118.45) for use other than in human food or animal feed:*			
493.12	Casein	Free		Free
	[Other:			
493.14	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported.	1.3¢ per lb.	Free (A,E,I)	5.5¢ per lb.]
493.17	Other	0.2¢ per lb.	Free (A,E,I)	5.5¢ per lb.

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Item	Articles	Rates of duty		
		1	Special	2

PART 4.—MACHINERY AND MECHANICAL EQUIPMENT

* * * * * * *

Subpart E.—Textile Machines; Laundry and Dry-Cleaning Machines; Sewing Machines

Subpart E headnote:

1. For purposes of applying item 670.74 to parts of articles provided for under item *912.03 or* 912.04, and such part that is entered, or withdrawn from warehouse for consumption, during the effective period of item *912.03 or* 912.04 shall be dutiable at the rate that would apply if that item had not been enacted.

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PART 5.—ELECTRICAL MACHINERY AND EQUIPMENT

Part 5 headnotes:

1.* * *

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3. The provisions of this headnote apply to "television apparatus and parts thereof" provided for in items 684.92 through 685.08 inclusive, of this part.
   (a) The term "complete", as used to describe television receivers, means a television receiver, fully assembled *in its cabinet*, whether or not packaged or tested for distribution to the ultimate purchaser.

* * * * * * *

4. Picture tubes imported in combination with, or incorporated into, other articles are to be classified in items 687.35 through 687.44, inclusive, unless they are—
   (i) incorporated into complete television recievers, as defined in headnote 3;
   (ii) incorporated into fully assembled units such as word processors, ADP terminals, or similar articles;
   (iii) put up in kits containing all the parts necessary for assembly into complete television receivers, as defined in headnote 3; or
   (iv) put up in kits containing all the parts necessary for assembly into fully assembled units such as word processors, ADP terminals, or similar articles.

[4.] *5.* For the purposes of this part "transceivers" are combinations of radio transmitting and receiving equipment in a common housing, employing common circuit components for both transmitting and receiving, and which are not capable of simultaneously receiving transmitting.

[5.] *6.* For the purposes of the tariff schedules handheld Citizens Bands (CB) radio transceivers are Citizens Band (CB) radio transceivers designed for operations in the hand, having a permanently affixed antenna and an internal microphone, and not designed for use with an external power source.

Item	Articles	Rates of duty		
		1	Special	2
	[6.] *7.* For purposes of the tariff schedules, the term *"entertainment broadcast band receivers"* means those radio receivers designed principally to receive signals in the AM (550-1650 kHz) and FM (88-108 mHz) entertainment broadcast bands, whether or not capable of receiving signals on other bands (e.g., aviation, television, marine, public safety, industrial, and citizens band).			

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SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND NONENUMERATED PRODUCTS

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Item	Articles	Rates of duty		
		1	Special	2
	PART 2.—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA			
	* * * * * * *			
	Subpart D.—Measuring, Testing, and Controlling Instruments			
	* * * * * * *			
[711.93	Bicycle speedometers and parts thereof............	18.3% ad val...	17% ad val. (D, I) Free (E).	110% ad val.]
711.92	*Bicycle-type and exerciser-type speedometers and parts thereof.*	*18.3% ad val...*	*17% ad val.....*	*110% ad val.*
	* * * * * * *			
	Subpart E.—Watches, Clocks, and Timing Apparatus			

Subpart E headnotes:
1. * * *

* * * * * * *

[4. *Special Marking Requirements:* Any movement, case, or dial provided for in this subpart, whether imported separately or attached to an article provided for in this subpart, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, or stamping, as specified below:

[(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

[(i) the name of the country of manufacture,

[(ii) the name of the manufacturer or purchaser,

[(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings; and

[(iv) in words, the number and classes of adjustments, or, if unadjusted, the word "unadjusted".

[(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

[(i) the name of the country of manufacture,

[(ii) the name of the manufacturer or purchaser, and

[(iii) the number of jewels, if any.

Item	Articles	Rates of duty 1	Special	2

[(c) Watch cases shall be marked on the inside or outside of the back cover to show—

[(i) the name of the country of manufacture, and

[(ii) the name of the manufacturer or purchaser.

[(d) Clock cases and other cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture; and

[(e) Dials shall be marked to show the name of the country of manufacture.]

4. Special Marking Requirements: Any movement or case provided for in this subpart, whether imported separately or attached to any article provided for in this subpart, shall not be permitted to be entered unless legibly and indelibly marked by cutting, die-sinking, engraving, stamping, or mold-marking (either indented or raised), as specified below:

(a) Watch movements shall be marked on one or more of the bridges or top plates to show—

(i) the name of the country of manufacture;

(ii) the name of the manufacturer or purchaser; and

(iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.

(b) Clock movements shall be marked on the most visible part of the front or back plate to show—

(i) the name of the country of manufacture;

(ii) the name of the manufacturer or purchaser; and

(iii) the number of jewels, if any.

(c) Watch cases shall be marked on the inside or outside of the back case, or, at the option of the manufacturer, bezels shall be marked, to show—

(i) the name of the country of manufacture; and

(ii) the name of the manufacturer or purchaser.

If the manufacturer chooses to mark the bezels, it shall be entitled to use an alphanumeric code to designate the name of the country of manufacture and the name of the manufacturer or purchaser, so long as each such code and its referent are not duplicative of any other code and referent and are subject to inspection by the public.

(d) Clock cases provided for in this subpart shall be marked on the most visible part of the outside of the back to show the name of the country of manufacture.

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PART 5.—ARMS AND AMMUNITION; FISHING TACKLE; WHEEL GOODS; SPORTING GOODS, GAMES AND TOYS

* * * * * * *

Subpart D.—Games and Sporting Goods

* * * * * * *

Item	Articles	1	Special	2
[735.20	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for:	5.04% ad val.	Free (A,E,I)	40% ad val.
	Puzzles and parts thereof			
	Nets for games or sports, not specially provided for.			
	Raquetball rackets			
	Squash rackets			
	Skateboards and parts thereof:			
	Skateboards			
	Parts:			

Item	Articles	Rates of Duty		
		1	Special	2
	Decks			
	Other			
	Backpacking tents of textile material			
	Other:			
	Playground, gymnasium, gymnastic and other exercise equipment:			
	Exercise cycles			
	Exercise rowing machines			
	Other			
	Other			
	Puzzles; game, sport, gymnastic, athletic, or playground equipment; all the foregoing, and parts thereof, not specially provided for:			
735.21	*Crossword puzzle books, whether or not in the form of microfilm, microfiches, or similar film media.*	*Free*		*Free*
735.24	*Other*	*5.52% ad val.*		*40% ad val.*
	Subpart E.—Models; Dolls, Toys, Tricks, Party Favors			
*	*	*	*	*
737.52	Toy books *(whether or not in the form of microfilm, microfiches, or similar film media)*, including coloring books and books the only reading matter in which consists of letters, numerals, or descriptive words.	Free		Free
*	*	*	*	*

SCHEDULE 8.—SPECIAL CLASSIFICATION PROVISIONS

* * * * * * *

Item	Articles	Rates of duty		
		1	Special	2
	PART 2.—PERSONAL EXEMPTIONS			
*	*	*	*	*
	Subpart D.—Other Personal Exemptions			
[825.00	Artificial limbs and limb braces imported solely for the personal use of a specified person and not for sale otherwise than for the use of such person.	Free		Free
	Articles for the blind:			
[826.10	Books, music, and pamphlets, in raised print, used exclusively by or for them.	Free		Free
[826.20	Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.	Free		Free]
*	*	*	*	*
	PART 3.—GOVERNMENTAL IMPORTATIONS			
	Subpart A.—United States Government			
*	*	*	*	*
	Articles for the use of any agency of the United States Government:			
830.00	Engravings, etchings, photographic prints, whether bound or unbound, recorded video tapes, and exposed photographic films (including motion-picture films) whether or not developed; *official government publications in the form of microfilm, microfiches, or similar film media.*	Free		Free
*	*	*	*	*
	Subpart B.—Foreign Governments and International Organizations			
*	*	*	*	*

Item	Articles	Rates of Duty 1	Special	2
840.00	Public documents, *whether or not in the form of microfilm, mocrofiches, or similar film media* (including exposed and developed motion picture and other films, recorded video tapes, and sound recordings) issued essentially at the instance and expense of a foreign government, of a political subdivision of a foreign Country, or of an international organization the membership of which includes two or more foreign countries.	Free		Free

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PART 4.—IMPORTATIONS OF RELIGIOUS, EDUCATIONAL, SCIENTIFIC, AND OTHER INSTITUTIONS

Part 4 headnotes:

1\. * * *

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[6. (a) The term "*instruments and apparatus*" (item 851.60) embraces only instruments and apparatus provided for in—

[(i) schedule 5: items 535.21-.27 and subpart E of part 2; and items 547.53 and 547.55 and subpart D of part 3;

[(ii) schedule 6: subpart G of part 3; subparts A and F and items 676.15, 676.20, and 678.50 of part 4; part 5; and items 994,16, 694.50, 694.63, and 696.60 of part 6; and

[(iii) schedule 7; part 2 (except subpart G); and items 790.59-.62 of subpart A of part 13;

but the term does not include materials or supplies, nor does it include ordinary equipment for use in building construction or maintenance or for use in supporting activities of the institution such as its administrative offices or its eating or religious facilities.

[(b) An institution desiring to enter an article under item 851.60 shall make application therefor to the Secretary of the Treasury including therein (in addition to such other information as may be prescribed by regulation) a description of the article, the purposes for which the instrument or apparatus is intended to be used, the basis for the institution's belief that no instrument or apparatus of equivalent scientific value for such purposes is being manufactured in the United States, and a statement that either the institution has already placed a bona fide order for the instrument or apparatus or has a firm intention, in the event of favorable action on its application, to place such an order on or before the final day specified in paragraph (d) of this headnote for the placing of an order. If the application is made in accordance with the applicable regulations, the Secretary of the Treasury shall promptly forward copies thereof to the Secretary of Commerce and to the Secretary of Health, Education, and Welfare. If, at any time while its application is under consideration by the Secretary of Commerce or by the Court of Customs and Patent Appeals on appeal from a finding by him, an institution cancels an order for the instrument or apparatus to which its application relates or ceases to have a firm intention to order such instrument or apparatus, it shall promptly so notify the Secretary of Commerce of such Court, as the case may be.]

6. (a) For purposes of item 851.60—

(i) the term "scientific instruments and apparatus" means scientific instruments and apparatus for deriving information from, or generating data necessary to, scientific experimentation by means of sensing, analyzing, measuring, classifying, recording, or similar operations; and

Item	Articles	Rates of duty		
		1	Special	2

(ii) the term "scientific" means pertaining to the physical or life sciences and, under certain circumstances, to applied sciences. Such instruments and apparatus do not include materials or supplies, or ordinary equipment for use in building construction or maintenance or in supporting activities (such as administration or operating residential or dining facilities) of the institution seeking their entry under this item.

(b) An institution desiring to enter an article under this item shall make an application therefor to the Secretary of Commerce, including therein (in addition to such other information as may be prescribed by regulation) a description of the article, the purposes for which the instrument or apparatus is intended to be used, the basis for the institution's belief that no instrument or apparatus of equivalent scientific value for such purposes is being manufactured in the United States (as to which the applicant shall have the burden of proof), and a statement that the institution either has already placed a bona fide order for such instrument or apparatus or has a firm intention to place an order therefor on or before the final day specified in paragraph (d) of this headnote. If the Secretary finds that the application is in accordance with pertinent regulations, he shall promptly forward copies thereof to the Secretary of Health and Human Services. If, at any time while its application is under consideration by the Secretary of Commerce or on appeal from a finding by him before the United States Court of Appeals for the Federal Circuit, the institution cancels an order for the instrument or apparatus covered by its application, or if it no longer has a firm intention to order such article, it shall promptly so notify the Secretary of Commerce or the Court, as the case may be.

(c) Upon receipt of the application the Secretary of Commerce shall, by publication in the *Federal Register*, afford interested persons and other Government agencies reasonable opportunity to present their views with respect to the question whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. After considering any views presented pursuant to this paragraph, including any written advice from the Secretary of Health[, Education and Welfare,] *and Human Services*, the Secretary of Commerce shall determine whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the instrument or apparatus is intended to be used, is being manufactured in the United States. Each finding by the Secretary of Commerce under this paragraph shall be promptly reported to [the Secretary of the Treasury and] to the applicant institution. Each such finding shall be published in the *Federal Register*, with a statement of the reasons therefor, on or before the ninetieth day following the date on which the application was made to the Secretary of [the Treasury] *Commerce* in accordance with applicable regulations.

* * * * * * *

(e) Within 20 days after the publication in the *Federal Register* of a finding by the Secretary of Commerce under paragraph (c) of this headnote, an appeal may be taken from said finding only upon a question or questions of law and only to the United States Court of [Customs and Patent Appeals] *Appeals for the Federal Circuit.*

(i) by the institution which made the application under paragraph (b) of this headnote,

Item	Articles	Rates of Duty 1	Special	2
	(ii) by a person who, in the proceeding which led to such finding, represented to the Secretary of Commerce in writing that he manufactures in the United States an instrument or apparatus of equivalent scientific value for the purposes for which the article to which the application relates is intended to be used,			
	(iii) by the importer thereof, if the article to which the application relates has been entered at the time the appeal is taken, or			
	(iv) by an agent of any of the foregoing.			
	Any appeal under this paragraph shall receive a preference over all other matters before the Court and shall be heard and determined as expeditiously as the Court considers to be practicable. The judgment of the Court shall be final.			
	[(f) The Secretary of the Treasury and the Secretary of Commerce may prescribe joint regulations to carry out their functions under this headnote.]			
	(f) The Secretary of Commerce may prescribe regulations to carry out his functions under this headnote.			
*	* * *	*	*	*
	Articles entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes:			
851.60	[Instruments] *Scientific instruments* and apparatus, if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States (see headnote 6 to this part).	Free		Free
*	* * *	*	*	*
851.67	*Tools specially designed to be used for the maintenance, checking, gauging or repair of scientific instruments or apparatus admitted under item 851.60.*	*Free*		*Free*
*	* * *	*	*	*

PART 7.—OTHER SPECIAL CLASSIFICATION PROVISIONS

Part 7 headnotes:

[1. No article shall be exempted from duty under item 870.30 unless a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character. Whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.]

1. (a) No article shall be exempted from duty under item 870.30 unless either:

(i) a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, or Cultural Character (17 UST (pt. 2) 1578; Beirut Agreement), or

(ii) such article—

Item	Articles	Rates of duty 1	Special	2
	(A) is imported by, or certified by the importer to be for the use of, any public or private institution or association approved as educational, scientific, or cultural by a Federal agency or agencies designated by the President for the purpose of duty-free admission pursuant to the Nairobi Protocol to the Florence Agreement, and			
	(B) is certified by the importer to be visual or auditory material of an educational, scientific, or cultural character or to have been produced by the United Nations or any of its specialized agencies.			
	For purposes of subparagraph (i), whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry under that item of such foreign articles to insure that they will be exhibited or used only for nonprofitmaking purposes.			
	(b) For purposes of items 870.32 through 870.35, inclusive, no article shall be exempted from duty unless it meets the criteria set forth in subparagraphs (a)(ii) (A) and (B) of this headnote.			
	* * * *	*	*	*
	3. For the purposes of items 870.65, 870.66, and 870.67—			
	(a) The term blind or other physically or mentally handicapped persons includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.			
	(b) These items do not cover—			
	(i) articles for acute or transient disability;			
	(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;			
	(iii) therapeutic and diagnostic articles; or			
	(iv) medicine or drugs.			
	* * * *	*	*	*
870.30	Developed photographic film, including motion-picture film on which pictures or sound and pictures have been recorded; photographic slides; transparencies; sound recordings; recorded video-tape; models *(except toy models)*; charts; maps; globes; and posters; all of the foregoing which are determined to be visual or auditory materials in accordance with headnote *(a)* 1 of this part.	Free	....	Free
	Articles determined to be visual or auditory materials in accordance with headnote 1 of this part:			
870.32	*Holograms for laser projection; microfilm, microfiches, and similar articles.*	*Free*	....	*Free*
870.33	*Motion-picture films in any form on which pictures, or sound and pictures, have been recorded, whether or not developed.*	*Free*	....	*Free*
870.34	*Sound recordings, combination sound and visual recordings, and magnetic recordings; video discs, video tapes, and similar articles.*	*Free*	....	*Free*
870.35	*Patterns and wall charts; globes; mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programmed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing.*	*Free*	....	*Free*
	* * * *	*	*	*

Item	Articles	Rates of Duty 1	Special	2
	Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:			
	Articles for the blind:			
870.65	*Books, music, and pamphlets, in raised print, used exclusively by or for them.*	*Free*		*Free*
870.66	*Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.*	*Free*		*Free*
870.67	*Other*	*Free*		*Free*

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of Duty 1	Special	2	Effective Period
	PART 1.—TEMPORARY LEGISLATION				
	Subpart A.—Temporary Provisions of Additional Duties				
	Subpart A headnotes: 1. * * * *2. For purposes of item 901.50, the phrase 'is suitable for any such uses' does not include ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) that is certified by the importer of record to the satisfaction of the Commissioner of Customs ('Commissioner') to be ethyl alcohol or a mixture containing such ethyl alcohol imported for uses other than fuel use or in producing such fuel related mixtures. If the importer of record certifies nonfuel use for purposes of establishing actual use or suitability under item 901.50, the Commissioner shall not liquidate the entry of ethyl alcohol until he is satisfied that the ethyl alcohol has in fact not been used for fuel use or use in producing such fuel related mixtures. If he is not satisfied within a reasonable period of time not less than 18 months of the date of entry, then the duties provided for in item 901.50 shall be payable retroactive to the date of entry. Such duties shall also become payable, retroactive to the date of entry, immediately upon the diversion to fuel use of any ethyl alcohol or ethyl alcohol mixture certified upon entry as having been imported for nonfuel use.*				

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
*	* *	*	* *	*	*
901.50	[Ethyl alcohol (provided for in item 427.88, part 2D, schedule 4) when imported to be used in producing a mixture of gasoline and alcohol or a mixture of a special fuel and alcohol for use as fuel, or when imported to used otherwise as fuel] *Ethyl alcohol (provided for in item 427.88, Part 2D, schedule 4) or any mixture containing such ethyl alcohol (provided for in part 1, 2 or 10, schedule 4) if such ethyl alcohol or mixture is to be used as fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in item 475.25), or is suitable for any such uses.*	60¢ per gal.	No change (E,I)	60¢ per gal.	On or before 12/31/92
	Subpart B.—Temporary Provisions Amending The Tariff Schedules				
	* * *	*	*	*	*
903.60	Mixtures of mashed or macerated hot red peppers and salt (provided for in item 141.77 or 141.98, part 8C, schedule 1)	Free		No change	On or before [6/30/85] *12/31/90*
903.65	Cantaloupes, fresh, if entered during the period from January 1 to May 15, inclusive of any year (provided for in items 148.12 and 148.17 part 9B, schedule 1)	Free		No change	On or before [5/15/85] *12/31/90*
	* * *	*	*	*	*
	Feathers and downs, whether or not on the skin, crude, sorted (including feathers simply strung for convenience in handling or transportation), treated, or both sorted and treated, but not otherwise processed (provided for in item 186.15, part 15D, schedule 1):				
903.70	Meeting both test methods 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration	Free		No change	On or before *12/31/*[87] *90*
903.80	Other	Free		Free	On or before *12/31/*[87] *90*
	* * *	*	*	*	*
	Wool (provided for in part 1C, schedule 3):				
905.10	All wool provided for in items 306.00 through 306.24	Free		Free	On or before [6/30/85] *12/31/90*
905.11	Wool not finer than 46s provided for in items 306.30 through 306.34	Free		Free	On or before [6/30/85] *12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
905.30	*Grouped filaments and yarns, not textured, in continuous form, colored, of nylon or modacrylic, whether or not curled, of not less than 20 denier per filament, to be used in the manufacture of wigs for dolls (provided for in item 309.31, part 1E, schedule 3, or item 389.62, part 7B, schedule 3).*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
905.45	*Sweaters that—* *(i) do not contain foreign materials in excess of the percentage of total value limitation contained in general headnote 3(a), and* *(ii) are assembled in Guam by joining together (by completely sewing, looping, linking, or other means of attaching) at least 5 otherwise completed major knit-to-shape component parts of foreign origin,* *if entered during any 12-month period ending on October 31 before the aggregate quantity of sweaters described in (i) and (ii) of this item that are entered exceeds the quota amount applicable for sweaters under this item that is established for such 12-month period by the Committee for the Administration of Textile Agreements*	*Free*			*Before 11/1/95*
	Needle-craft display models, primarily hand stitched, of completed mass-produced kits:				
906.10	Articles provided for in items 355.16, 360.70, 360.78, 364.18, 364.23, 364.30, 365.78, 365.84, 365.86, 366.79, 367.34, 367.55, 367.60, 386.04, 386.06, 386.13, 386.50, 388.40, and 389.62 of schedule 3 (except shoe uppers and tents).	Free		No change	On or before [6/30/85] *12/31/90*
906.12	Aprons and baby bibs (provided for in items 383.03, 383.08, 383.20, and 383.50, part 6F, of schedule 3).	Free		No change	On or before [6/30/85] *12/31/90*
906.26	*P-sulfobenzoic acid, potassium salt (provided for in item 404.28, part 1B, schedule 4).*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
906.42	*3,5-Dinitro-o-toluamide (provided for in item 411.93, part 1C, schedule 4).*	*Free*		*No change*	*On or before 12/31/90*
906.45	*Dicyclohexylben-zothiazylsulfenamide (provided for in item 406.39, part 1B, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
906.48	*2,4 Dichloro-5-sulfamoyl benzoic acid (provided for in item 406.56, part 1B, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
907.01	Triphenyl phosphate (provided for in item 409.34, part 1C, schedule 4)	Free		No change	On or before [9/30/85] *12/31/90*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
*	* * *	*	*	*	*
907.09	*2,2'-Oxamido bis-[ethyl] 3-(3,5-di-tert-butyl-4-hydroxy-phenyl) propionate] provided for in item 405.34, part 1B, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.10	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (however provided for in items 402.36 through 406.63, part 18, schedule 4, *but excludng 6,7-dihydroxy-2-naphthalene sulfonic acid sodium salt provided for in item 403.57,)* to be used in the manufacture of photographic color couplers	Free		No change	On or before [9/30/85] *12/31/90*
907.11	*Mixtures containing derivatives of N-[4-(2-hydroxy-3-phenoxy-pro-poxy)phenyl] acetamide (provided for in item 407.16, part 1B, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.12	Photographic color couplers (provided for in item 408.41, part 1C, schedule 4)	Free		No change	On or before [9/30/8] *12/31/90*
*	* * *	*	*	*	*
[907.15	1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4)	8.6% ad val.	6.9% ad val (D) No change (A,E,I)	7¢ per lb. + 41% ad val	On or before 9/30/85]
907.15	*1,1-Bis(4-chlorophenyl)-2,2,2, trichloroethanol (Dicofol) (provided for in item 408.28, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
		* * *			
*	* * *	*	*	*	*
907.17	Sulfapyridine (provided for in time 411.27, part 1C, schedule 4)	Free		Free	On or before [12/31/85] *12/31/90*
*	* * *	*	*	*	*
907.24	*1,2-Dimethyl-3,5-diphenylpyrazolium methyl sulfate (difenzoquat methyl sulfate) (provided for in item 408.19, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
907.26	*Dinocap (provided for in item 408.16, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.27	*Mixtures of 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol) and application adjuvants (provided for in item 408,36, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.28	*Mixtures of Mancozeb and dinocap (provided for in item 408.38, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.29	*Dinocap (provided for in item 408.38, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.30	*Cross-linked polyvinylbenzyltrimethylammonium chloride (cholestyramine resin USP) (provided for in item 412.70, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
*	* * *	*	*	*	*
907.39	*d-6-Methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt (provided for in item 412.22, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
907.43	*3,7-Bis(dimethylamino)-phenazathionium chloride (methylene blue) (provided for in item 409.74, part 1C, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
907.53	*3-amino-3-Methyl-1-butyne (provided for in item 425.52, part 2D, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.55	*Secondary butyl chloride (provided for in item 429.47, part 2D, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.60	*Maneb, zineb, mancozeb and metiram (provided for in item 432.15, part 2E, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
907.63	[Nicotine resin complex (provided for in item 437.13, part 3B, schedule 4)] *Nicotine resin complex put up in measured doses in chewing gum form (provided for in item 438.02, part 3B, schedule 4).*	Free		No change	On or before [12/31/87] *12/31/90*
*	* * *	*	*	*	*
907.83	*Nonbenzenoid vinyl acetate-vinyl chloride-ethylene terpolymer, containing by weight less than 50 percent derivates of vinyl acetate (provided for in item 445.48, part 4A, schedule 4)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
910.95	*Tungsten ore (provided for in item 601.54, part 1, schedule 6)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
911.25	Synthetic rutile (provided for in item 603.70, part 1, schedule 6).	*Free*		*No change*	*On or before [6/30/83] 12/31/90*
*	* * *	*	*	*	*
911.95	Entertainment broadcast band receivers valued not over $40 each (however provided for in schedule 6) incorporating timekeeping or time display devices, not in combination with any other article, and not designed for motor vehicle installation.	*Free*		*No change*	*On or before 12/31/86 12/31/90*
*	* * *	*	*	*	*
912.03	*Carding and spinning machines specially designed for wool, other than machines specially designed for the manufacture of combed wool (worsted) yarns (provide for in item 670.04, part 4E, schedule 6)*	*Free*		*No change*	*On or before 12/31/90*
*	* * *	*	*	*	*
912.05	Generator lighting sets for bicycles, and parts thereof (provided for in item 653.39, part 3F, schedule 6)	Free		No change	On or before [6/30/86] *12/31/90*

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
912.06	*Bicycle chains (provided for in items 652.13 and 652.15, part 3F, schedule 6)*	*Free*		*No change*	*On or before 12/31/90*
912.07	Machines designed for heat-set, stretch texturing of continuous man-made fibers (provided for in item 670.06, part 4E, Schedule 6)	Free		No change	On or before [12/31/85] *12/31/90*
912.08	Single cylinder fine gauge hosiery knitting machines and double cylinder jacquard hosiery knitting machines (provided for in items 670.16 and 670.18, part 4E, schedule 6)	Free		No change	On or before [9/30/85] *12/31/90*
912.09	Double-headed latch needles (provided for in item 670.58, part 4E, schedule 6)	Free		No change	On or before [6/30/85] *12/31/90*
912.10	Caliper brakes, drum brakes *front and rear derailleurs, shift levers, cables and casings for derailleurs,* coaster brakes, two-speed hubs with internal gear-changing mechanisms, three-speed hubs incorporating coaster brakes, three-speed hubs not incorporating coaster brakes, click twist grips, trigger and twist grip controls for three-speed hubs, [multiple] free wheel sprockets, cotterless type crank sets, frame lugs, *and* parts of all the foregoing, including cable or inner wire for caliper brakes and casing therefor, whether or not cut to length[, and parts of bicycles consisting of sets of steel tubing cut to exact length and each set having the number of tubes needed for the assembly (with other parts) into the frame and fork of one bicycle] (provided for in items 732.35, 732.38, 732.41, and 732.42, part 5C, schedule 7) [1]	Free		No change	On or before [6/30/86] *12/31/90*
*	*	*	*	*	*
912.12	*Hosiery knitting needles (provided for in item 670.62, part 4E, schedule 6)*	*Free*		*No change*	*On or before 12/31/90*
*	*	*	*	*	*
912.14	*Television picture tubes which would be included in assemblies provided for in item 684.96 but for headnote 4 to part 5, and not provided in item 912.16*	*11% ad val.*		*No change*	*On or before 10/31/87*
*	*	*	*	*	*
912.16	*Television picture tubes, color, having a video display diagonal of less than 12 inches and under (provided for in item 687.35, part 5, schedule 6)*	*Free*		*No change*	*On or before 12/31/90*
912.30	Stuffed dolls (with or without clothing) and doll skins for stuffed dolls (provided for respectively in items 737.23 and 737.26, part 5E, schedule 7)	Free		No change	On or before [12/31/85] *12/31/90*

APPENDIX TO THE TARIFF SCHEDULES—Continued

Item	Articles	Rates of Duty 1	Rates of Duty Special	Rates of Duty 2	Effective Period
912.32	*Stuffed toy figures of animate objects (except dolls) not having a spring mechanism and not exceeding 25 inches in either length, width, or height (provided for in item 737.30, Part 5E, Schedule 7)*	*Free*		*No change*	*On or before 12/31/90*
912.34	Stuffed or filled toy figures of inanimate objects not having a spring mechanism (provided for in item 737.47, part 5E, schedule 7)	Free		No change	On or before [12/31/86] *12/31/90*
912.36	Skins for stuffed toy figures of animate and inanimate objects (provided for in item 737.51, part 5E, schedule 7)	Free		No change	On or before [12/31/86] *12/31/90*
912.45	Frame for hand-held umbrellas chiefly used for protection against rain (provided for in item 751.20, part 8B, schedule 7)	Free		No change	On or before [12/31/86] *12/31/90*
*	* *	*	*	*	*
915.10	*Transparent plastic sheeting containing 30% or more of lead, by weight (provided for in item 774.55, part 12B, schedule 7)*	*Free*		*No change*	*On or before 12/31/90*
915.20	*Personal effects of aliens who are participants in or officials of the Tenth Pan American Games, or who are accredited members of delegations thereto, or who are members of the immediate families of any of the foregoing persons, or who are their servants; equipment for use in connection with such games; and other related articles as prescribed in regulations issued by the Secretary of the Treasury*	*Free*		*Free*	*On or before 12/31/90*

SECTION 3 OF THE ACT OF JUNE 18, 1934

SEC. 3.(a) * * *

(b) The exemption from the customs laws of the United States provided under subsection (a) shall not be available before [June 30, 1986] *December 31, 1990,* to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

EDUCATIONAL, SCIENTIFIC, AND CULTURAL MATERIALS IMPORTATION ACT OF 1982

[SUBTITLE B—IMPLEMENTATION OF NAIROBI PROTOCOL

[SEC. 161. SHORT TITLE, ETC.

[(a) SHORT TITLE.—This subtitle may be cited as the "Educational, Scientific, and Cultural Materials Importation Act of 1983".

[(b) PURPOSE.—The purpose of this subtitle is to enable the United States to give effect to the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials (open for signature on March 1, 1977) with a view to contributing to the cause of peace through freer exchange of ideas and knowledge across national boundaries.

[SEC. 162. BOOKS, PUBLICATIONS, AND DOCUMENTS.

[Part 5 of schedule 2 is amended—

[(1) by inserting, in numerical sequence, the following new item:

["270.90	Catalogs of films, recordings or other visual and auditory material of an educational, scientific, or cultural character.	Free	Free";

[(2) by striking out items 273.45 through 273.55, and the superior heading thereto, and inserting in lieu thereof the following:

["273.52	Architectural engineering, industrial, or commercial drawings and plans, whether originals or reproductions.	Free	Free";

and

[(3) by inserting immediately below the phrase "Printed not over 20 years at time of importation:" and above (and at the same hierarchical level as) "Lithographs on paper:" the following new item:

["274.55	Loose illustrations, reproduction proofs or reproduction films used for the production of books.	Free	Free".

[SEC. 163. VISUAL AND AUDITORY MATERIALS.

[(a) PHOTOGRAPHIC FILM.—Part 5 of schedule 2 is amended—

[(1) by inserting the phrase "(including developed photographic film; photographic slides; transparencies; holograms for laser projection; and microfilm, microfiche, and similar articles)" immediately after "Photographs" in the superior heading to items 274.50 through 274.70, and

[(2) by adding, in numerical sequence, the following new item:

["274.67	Developed photographic film; photographic slides; transparencies; holograms for laser projection; and microfilm, microfiche, and similar articles.	Free	Free".

[(b) MOTION PICTURE FILMS.—Subpart G of part 2 of schedule 7 is amended—

[(1) by striking out "724.05 and 724.10" in headnote 1 and inserting in lieu thereof "724.07 and 724.22",

[(2) by striking out headnote 2,

[(3) by striking out items 724.05 and 724.10, and the superior heading thereto, and inserting in lieu thereof the following:

["724.07	Motion-picture films in any form on which pictures, or sound and pictures, have been recorded whether or not developed.	Free	Free",

[(4) by striking out items 724.15 through 724.40 and inserting in lieu thereof the following new item:

[“724.22	Sound recordings, combination sound and visual recordings, and magnetic recordings not provided for in the *foregoing* provisions of this subpart.	Free	Free”,

and

[(5) by striking out the rates of duty appearing in rate columns 1, LDDC, and 2 for item 724.12 and inserting “Free” in rate columns numbered 1 and 2.

[(c) PATTERNS, MODELS, ETC.—Part 7 of schedule 8 is amended—

[(1) by striking out headnote 1 and redesignating headnote 2 as headnote ,

[(2) by striking out item 870.30, and

[(3) by inserting, in numerical sequence, the following new item:

[“870.35	Patterns, models (except toy models) and wall charts of an educational, scientific or cultural character, mock-up or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing.	Free	Free”.

[SEC. 164. TOOLS FOR SCIENTIFIC INSTRUMENTS OR APPARATUS.

[Part 4 of schedule 8 is amended by adding in numerical sequence, the following new item:

[“851.67	Tools specially designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus under item 851.60.	Free	Free”.

[SEC. 165. ARTICLES FOR THE BLIND OR OTHER HANDICAPPED PERSONS.

[(a) ELIMINATION OF DUTY.—Subpart D of part 2 of schedule 8 is amended by striking out items 825.00, 826.10, 826.20.

[(b) SPECIALLY DESIGNED ARTICLES.—Part 7 of schedule 8 is amended—

[(1) by inserting, in numerical sequence, the following new items:

[“	Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:		
	Articles for the blind:		
[870.50	Books, music, and pamphlets, in raised print, used exclusively by or for them.	Free	Free
[870.55	Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.	Free	Free
[870.60	Other	Free	Free”;]

and

[(2) by adding the following new headnote:

[“2. For the purposes of items 870.50, 870.55, and 870.60—

[“(a) The term ‘physically or mentally handicapped persons’ includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

[“(b) These items do not cover—

[“(i) articles for acute or transient disability;

[“(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;

[“(iii) therapeutic and diagnostic articles; or

[“(iv) medicine or drugs.”.

[(c) STATISTICAL INFORMATION.—The Secretary of the Treasury, in conjunction with the Secretary of Commerce, shall take such actions as are necessary to obtain adequate statistical information with respect to articles to which the amendments made by this section apply.

[SEC. 166. AUTHORITY TO LIMIT CERTAIN DUTY-FREE TREATMENT ACCORDED UNDER THIS ACT.

[(a) AUTHORITY TO LIMIT.—

[(1) IN GENERAL.—In addition to any authority under section 201 of the Trade Act of 1974 (19 U.S.C. 2251), the President may proclaim changes in the Tariff Schedules of the United States (19 U.S.C. 1202) to narrow the scope of, or place conditions upon, the duty-free treatment accorded under 164, section 165, or section 167(b) (insofar as section 167(b) relates to temporary duty-free treatment of articles covered by sections 164 and 165) with respect to any type of article the duty-free treatment of which—

[(A) has significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article, and

[(B) is not provided for in the Florence Agreement or the Nairobi Protocol.

[(2) RATES WHICH ARE TO TAKE EFFECT IF DUTY-FREE TREATMENT ELIMINATED.—If the President eliminates any duty-free treatment under paragraph (1), the rate of duty thereafter applicable to any article which is—

[(A) affected by such action, and

[(B) imported from any source,

shall be the rate proclaimed by the President as the rate applicable to such article from such source (determined without regard to this subtitle).

[(b) RESTORATION OF TREATMENT.—If the President determines that any duty-free treatment which is no longer in effect because of action taken under subsection (a) could be restored in whole or in part without a resumption of significant adverse impact on a domestic industry or portion thereof, the President may proclaim changes to the Appendix to the Tariff Schedules of the United States to resume such duty-free treatment.

[(c) OPPORTUNITY TO PRESENT VIEWS.—Before taking an action authorized by subsection (a) or (b), the President shall afford an opportunity for interested Government agencies and private persons to present their views concerning the proposed action.

[SEC. 167. EFFECTIVE DATE; TEMPORARY DUTY-FREE TREATMENT.

[(a) IN GENERAL.—The amendments made by sections 162, 163, 164, and 165 shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date which the President proclaims as the date on which he ratifies the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials.

[(b) TEMPORARY DUTY-FREE TREATMENT.—

[(1) ARTICLES FOR THE BLIND OR OTHER HANDICAPPED PERSONS.—Subject to the provisions of paragraph (3) and section 166, the President shall proclaim changes to the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) to implement the provisions of section 165 with respect to articles entered, or withdrawn from warehouse for consumption, during the two and one-half-year period beginning on the thirtieth day following the date of the enactment of this subtitle.

[(2) OTHER ARTICLES.—Subject to the provisions of paragraph (3) and section 166, the President, if he deems such action to be in the interest of the United States, may proclaim further changes to the Appendix to the Tariff Schedules of the United States to implement any provision of section 162, 163, or 164 with respect to articles entered, or withdrawn from warehouse for consumption, during any period beginning on or after the thirtieth day following the date of the enactment of this subtitle and ending not later than two and one-half years after such beginning date.

[(3) TIME PROVISIONS CEASE TO HAVE EFFECT.—If any temporary duty-free treatment accorded under paragraph (1) or (2) has not yet expired, such treatment shall cease to be effective on and after the date proclaimed by the President pursuant to subsection (a).]

MINORITY VIEWS ON H.R. 4750

The Committee bill is more a political statement than genuine legislation. If it ever got as far as the President's desk, he would surely veto it.

The bill was ordered by the House Democratic leadership with the hope their party's candidates could use it successfully in the fall elections. But we do not believe a savvy electorate will take the bait. Driven by special interests, it simply is not a good response to the trade problems our country faces.

We have an alternative, a Republican substitute (described below), which we commend to all, especially our colleagues in the House. We believe a close comparsion with the Committee bill will result in widespread support for our more reasoned approach. It is based on our firm belief that trade legislation is timely and important, that current laws need to be toughened, and that our President needs a clear and sufficent authority to lead us successfully through a new round of multilateral trade negotiations.

Toward that end, we had hoped to participate in the development of truly bipartisan trade reform legislation from the very beginning of the exercise. But that was not to be.

The initial markup document, prepared without any contribution from our side, was not what we preferred, but it was salvagable. As the amending process unfolded, through subcommittee and into Committee, we sought to improve the product, and although some of our amendments were accepted, our most important efforts were rejected, even as the more objectionable offerings of the majority were embraced on party-line votes. Eventually, the measure moved beyond redemption.

One of the most unreasonable provisions of the Committee bill, and a prime example of special interest excesses, would have the United States, in effect, sit in pious judgment on the labor practices of our trading partners. This adds a new dimension to our trade laws, forcing into the 301 statute a definition of an unreasonable trade practice as one which denies certain worker rights, including a minimum wage and occupational health and safety standards. These rights have yet to be defined precisely, and no international agreement on them has been reached, with the U.S. as a signatory. Yet, we would demand under this provision that our trading partners ensure conditions or the U.S. will "punish" them.

We believe that worker rights—involving child labor standards and laws on forced labor as well as safety and health rules—should be set forth as goals for all, and should be the subject of negotiations among countries. But the standards that we in the United States would agree are reasonable might be viewed as outrageous, and even insulting, by some of our most valuable trading partners, especially the less developed ones. Should our trade laws try to define how another country's labor force is organized? Or should the U.S. set an example by dictating a way of life?

The Committee bill also would mandate U.S. sanctions against certain countries which fail to reduce their trade surpluses with us by 10% a year. We are very much in favor of turning such trends, and we urge more bilateral action where the U.S. is at a disadvantage. Further, some of us feel that clear signals should be sent to the effect that we mean business in dealing with inequitable foreign practices. But this particular provision goes too far. It is a veiled surcharge device, aimed at a few countries. It is illegal under GATT, it will leave U.S. exporters vulnerable, and it could undercut our credibility as people who want to develop fairer, more effective trade disciplines. Countries that are the targets of this provision can be expected to retaliate where we are most vulnerable, specifically in argicultural products. The effect is sure to be counterproductive. Our farmers have enough difficulties; they don't need more.

Still another provision of the Committee bill is blatantly antibusiness and designed to harass the entire trading community, both foreign and domestic. This would give a private cause of action for damages, to any individual who is an interested party in an antidumping case, to repair "economic loss" as a result of dumping. This would be in addition to GATT sanctioned antidumping duties that have been imposed to offset the dumping practice.

Foreign manufacturers, theoretically, can be called into the U.S. Court of International Trade by an individual worker, owner or supplier of an industry that is affected by dumping. Experience has taught us the futility of applying our own laws extraterritorially, so this provision makes the importer or consignee ultimately liable. The goal seems to be to badger those who use imported goods into no longer doing so.

Would the industries that support this provision accept the same procedure against domestic firms which engage in certain pricing strategies? Given the fact that U.S. firms have more dumping actions against them than those of any other country, should U.S. exporters accept their liability?

In what we consider a particularly petty and partisan move, the Committee bill would change the way the chairman and vice chairman of the International Trade Commission (ITC) are selected. Under existing law, they are designated by the President for two-year terms. The chairman may not be one of the two most recently appointed Commissioners, nor of the same political party as the outgoing chairman or the incoming vice chairman. This procedure has ensured a sharing of responsibility and leadership, while maintaining a continuity of service and an element of independence and bipartisanship.

The Committee bill would require the Senate to confirm the President's appointment of a chairman and vice chairman and would allow even the "newest" commissioner to head the organization. Although this change would, in our opinion, do nothing to improve the operation of the ITC or enhance the performance of the commissioners, our primary objection is based on the transparent motive behind it: To "punish" a particular commissioner. As far as we are concerned, this is a deplorable way to handle a Congressional grievance against a commissioner. It is devious, circuitous and runs the risk of undermining an entire agency's effectiveness.

But such is the thrust of the Committee bill as a whole. It is designed as much to attack the Administration in an election year as it is to deal with matters of trade law. It is designed as much to "slap" specific countries, as it is to gain access to foreign markets.

From a domestic policy perspective, the Committee bill could adversely affect both agriculture and business, especially smaller enterprises. It is likely to result in fewer jobs and lower standards of living for millions of Americans. In short, it's capable of reversing one of our longest periods of sustained economic growth.

Our Republican substitute, on the other hand, offers hope. It is tough trade reform, but it is fair trade reform. It takes away some Presidential discretion and strengthens the hand of the U.S. Trade Representative (USTR). It requires more executive action and less time to take it.

More specifically, it:

I. Improves Section 301 Action Against Unfair Trade Practices

USTR is required to formulate and announce any relief or retaliatory action with respect to affirmative findings under section 301. USTR would direct Customs and other appropriate agencies to collect *additional duties, suspend duty free treatment, impose quantitative restrictions* or take other actions necessary to withdraw the benefits of trade concessions under any bilateral or multilateral agreement.

Full reciprocity would be ordered in removing or redressing the effects of unfair, unreasonable, and discriminatory trade practices against U.S. products, services and investments.

When significant national economic interest warrants, the President could reject the recommendation of the USTR or announce alternatives or additional relief measures. Any such action must be announced within 20 days after the USTR makes a recommendation, otherwise the USTR's recommendation becomes effective.

When USTR initiates an investigation involving foreign *violations* of *trade agreements* or other "unjustifiable" practices, a *fast-track procedure* would be used. USTR could implement interim relief, if appropriate, but must conduct *expedited* negotiations in an attempt to correct the violations. If negotiations do not provide acceptable results within 5 months, the USTR must announce action. The *timetable* for other cases is *shortened* from 7, 8 and 12 months to a uniform 9 months.

Also under section 301, an unreasonable trade practice would be defined as *unfair government pricing of natural resources* or unfair government pricing of the right to remove or extract natural resources. *Targeting* would become an explicit cause of action to the extent it violated trade agreements, or is unjustifiable, unreasonable, or discriminatory. There would be no injury test or separate ITC procedure for targeting, and it would have more visibility and priority.

II. Strengthens Section 201 Relief Action and Monitoring

The ITC would report recommendations to the USTR, rather than the President. USTR would formulate final relief action, announce the relief and direct Customs to implement tariffs, withdraw duty-free treatment or impose quantitative restrictions necessary to implement the relief. USTR also could negotiate *orderly marketing agreements*, as appropriate, and implement them in combination with tariff or quota relief.

When significant national economic interest warrants, the President could reject the recommendation of the USTR or announce alternative relief measures. Such action must be taken within 20 days after the USTR recommendation is announced; otherwise USTR's recommendation becomes effective. The President must report to Congress, within the 20 day period, his reasons for taking no action or taking alternative action.

If USTR determines that an industry is faced with *irreparable harm* that is substantially caused by imports, USTR could take *interim action* to prevent any rapid deterioration of the industry's *market position* pending the outcome of the case.

The Trade Representative would be authorized to provide limited *relaxation* (up to 5 years) of *antitrust regulations* in order to allow *import-impacted companies* to merge or acquire one another, unless there is a "significant possibility" that such merger or acquisition would create a monopoly situation and allow the new firm to charge prices "above competitive levels" for a significant period of time. *Antitrust relief* would be in lieu of tariffs and quotas.

Emergency relief would be imposed with respect to imports of *perishable products* from any country during the course of an import relief proceeding if deemed necessary by the Secretary of Agriculture.

The ITC would be required to set-up an *"early warning"* system to monitor trade competition and prepare a quarterly report that identifies, ranks, and analyzes items where data indicate significant increases in foreign trade impact.

III. Establishes a New Telecommunications Law

This law would be used in achieving "fully competitive market opportunities" for U.S. industry in those markets in which barriers exist to free trade in telecommunications products. It would set negotiating objectives for the pursuit of fully *competitive market opportunities*, plus time limits, and require action in the telecommunications sector against countries where negotiations have failed.

IV. Deals More Effectively with Non-market Economies (NME)

Section 406 of the Trade Act of 1974 would be made more effective for the prevention of *market disruption* by imports from *non-market economies.* If NME imports contribute to market disruption so as to be an *important cause of material injury,* or threat thereof, to a domestic industry, then the ITC must recommend, and the USTR implement, relief in the form of variable tariffs, quotas, or orderly marketing agreements.

V. Provides Tougher Countervailing Duty and Anti-dumping Rules

"Diversionary" dumping would be deemed to occur when any material or component (input product) which (1) is incorporated into, and amounts to 35 percent of the value of, the merchandise under

investigation; and (2) has been the subject of an investigation no longer than one year before the date of initiation, is purchased by the manufacturer or producer of such merchandise at a price that is less than the foreign market value of the input product.

A *drawback prohibition* would prevent antidumping and countervailing duties on imported merchandise from being eligible for refund under drawback provisions.

Repeat offenders would be targeted. If a foreign firm had two or more dumping orders against it within the past 5 years, an interested party from a domestic industry, which manufactures a product also made by that foreign firm, could request the ITC to *monitor prices* and volume of imports of that product. ITC must begin monitoring immediately. If a dumping petition is filed subsequently by the interested party, or is filed immediately, Commerce shall give the petition expedited consideration and the *"guilty knowledge test"* will be deemed to have been met under the critical circumstances criterion of the dumping statutes.

In evaluating the state of domestic industry, the ITC also must take into account the actual and potential loss of export sales of the merchandise in markets in which *foreign antidumping* remedies have been imposed against the same class or kind of merchandise from the same country of origin.

With respect to a threat of injury, the ITC also must consider (1) diversion of foreign products to the U.S. market by reason of restraints on exports of the merchandise to (or on imports of the merchandise into) *third country markets*; and (2) in an antidumping case, the extent to which the foreign merchandise has been sold at less than fair value in other markets, as evidenced by antidumping orders or findings in other countries.

In determining material injury, ITC must *cumulatively assess* the volume and price effects of imports from two or more countries of like products if such imports are either (a) currently subject to any antidumping or countervailing duty investigation where there were preliminary determinations of the unfair practice and material injury, or (b) within the past 12 months, subject to any antidumping or countervailing duty investigatoin which resulted in a final order (explicit mandate of *cross-statute cumulation).*

VI. Makes Other Improvements in Trade Laws and Procedures

It removes the requirement for proof of substantial injury in cases that involve violation of *"intellectual property rights,* including patent, copyright, trademark or mask work infringement.

Customs would be required to develop an immediate *priority program* aimed at detecting, investigating and prosecuting patent and copyright infringement cases.

National security cases would be tightened by amending section 232 of the Trade Expansion Act of 1962 so that, following an investigation of the impact on national security of certain products being imported in increasing quantities, the President must announce, *within 90 days* after receipt of a recommendation by the Secretary of Commerce, whether he concurs in the recommendation and what action, if any, is to be taken. Action on any pending case must be announced *within 60 days.*

Before taking action against imports under U.S. trade laws, USTR shall assess, in addition to other relevant factors, the *impact* of such action *on consumers, agriculture exports and small businesses.*

Anyone convicted of three violations of *copyright fraud,* import declaration violation, *smuggling* and certain other criminal violations of customs laws would be barred from further importations for a period of three years or subject to a maximum $100,000 fine.

The Republican Substitute notes that it is vital to the purpose of the *Multifiber Agreement* (MFA) that bilateral limitations on shipments of textiles and apparel, and periodic adjustments thereto, should be carried out on a timely basis to respond to the changing U.S. market. The Administration should expedite the issuance of notices requesting the negotiation of such periodic adjustments.

Our Substitute also establishes a *Fair Trade Advocate's Branch* in the USTR to assist qualifying industries (1) in preparing cases, (2) by acting as advocate, and (3) by pursuing appeals. Qualifying industries include (1) small business, (2) any industry which would suffer repraisals or other serious adverse economic impact if it pursued the case itself, and (3) any industry, with a meritorious case, which lacks adequate resources.

VII. Provides for a Reagan Round of GATT Negotiations

Our Substitute gives the President eight-year negotiating authority in an effort to resolve pending issues not satisfactorily taken care of in earlier trade negotiations and to develop multilateral disciplines in areas where trade problems have emerged or become more acute. Such new areas should include *trade in services* and *high technology* products and software; protection of intellectual property rights; trade related *investment and financial issues;* proliferation of *non-tariff barriers,* and increasing *government intervention* in order to unfairly protect domestic industries.

A principal negotiating objective should be improvement in the dispute settlement mechanism of the GATT so that specific trade problems can be resolved quickly. The negotiations should continue to press for reduction of pending conflicts in the agriculture area, subsidies, safeguard actions, and subsidized financing, including preferential loans and mixed credits.

We believe the *Reagan Round* should give high priority to achieving *full reciprocity* for U.S. products, services and investment in foreign markets. Also, an increased effort should be made to bring developing countries into full participation in the international trading community and to reduce those preferential practices that distort trade patterns. Negotiations should ensure that all developed countries share equally the responsibility of advancing the economies of developing countries.

USTR, as soon as practicable, should enter into negotiations with Canada to establish a bilateral free trade zone as approved under the Trade and Tariff Act of 1984. Special efforts should be made to resolve outstanding trade disputes and strengthen existing bilateral agreements between the U.S. and Canada in order to facilitate *free-trade zone* negotiations and to assure rapid implementation of any free trade area. Our Substitute adds *five-year authority* for the President to enter into and proclaim the reduction or elimination of duties on a specific list of tariff items, to the extent tariff concessions of equivalent value are granted by Canada.

In summary, we believe this Republican Substitute represents a strong and sane legislative response to our nation's trade problems. Some of us would have preferred more radical changes; some of us wanted much less. Our Substitute stretches the limits of acceptability at both ends of the philosophical spectrum. But that's what compromise is all about, and this is a good compromise.

JOHN J. DUNCAN.
BILL ARCHER.
GUY VANDER JAGT.
PHILIP M. CRANE.
BILL FRENZEL.
DICK SCHULZE.
BILL GRADISON.
W. HENSON MOORE.
CARROLL CAMPBELL.
BILL THOMAS.
RAYMOND J. MCGRATH.
HAL DAUB.
JUDD GREGG.

SEPARATE VIEWS OF JOHN J. DUNCAN AND RICHARD T. SCHULZE

We support the Republican Substitute as a better legislative answer, than the Committee bill, to our country's difficult problems in trade.

Essentially, we have been playing the world trade game using worn-out equipment and strategy, and abiding by rules which other players obviously no longer take seriously. No wonder we have been losing.

Our basic trade laws, as well as the way they are enforced, need to be strengthened. We absolutely must learn to deal with the realities of today, not with the international exchange of goods and services as it existed yesterday.

When the Committee on Ways and Means began marking up a trade reeform bill, we had high hopes that it would be a bipartisan product. We really felt it could be, because so many of us, on both sides of the aisle, shared so many concerns on the subject.

Events, however, led to a partisan Committee bill. This in turn led to the Republican Substitute, which does represent genuine compromise. It is tough, fair, realistic, and can help our country win again.

Both the Republican Substitute and the Committee bill are the result of many factors, two of which stand out above all others. First is the enormous trade deficit our country has experienced over the past few years. This deficit has caused severe dislocation and harm to a wide spectrum of industries across America and has led to strong calls for help in rectifying what has become intolerable economic distress to the industrial backbone of our nation.

Second, and perhaps the driving force of this trade bill, has been the Administration's lack of focused attention on the need to address in a decisive and effective manner the causes of our steadily increasing trade deficit, which approached $150 billion last year. Over the past three years, Americans witnessed the dollar rise to unprecedented and unsupportable heights and watched our trade deficit balloon to record levels. The Administration did take action, but it was too little, too late.

The Administration has a number of trade laws at its fingertips; however, it has been extremely reluctant to implement them in many warranted situations. It is amazing that only late last year did the Administration self-initiate for the first time ever a Section 301 case. Trade law under Section 301 is designed to enforce U.S. trade rights, particularly in relation to other countries' unfair trade parctices. While we have illustrative lists of such unfair trade practices, including many impregnable trade barriers to U.S. goods and services which have proven to be some of the most competitive in the world, little or no action was taken until very recently. The same is true for our overvalued dollar and trade deficit in general.

The result has been mounting frustration in Congress and across America with the attitude of the Administration and, consequently, a Committee trade bill that may not provide the best solution to our trade problems. In certain ways, the omnibus trade legislation now before us goes beyond the confines of reasonable and beneficial reform of U.S. trade laws. In a sense Congress has overreacted to current economic ills confronting various sectors within our economy.

The Administration must continue to move in the direction in which it turned this past September before it can prevent passage of this type of legislation. The Administration must demonstrate that it will fully implement, without hesitation, our trade laws to open markets overseas and prevent egregious unfair trade practices of other countries. Until and only then will the Administration receive from Congress a trade bill it will openly welcome and embrace.

DICK SCHULZE.
JOHN J. DUNCAN.

SEPARATE VIEWS BY MR. CRANE AND MR. FRENZEL

Before the Ways and Means Committee took up the Trade Bill, the U.S. Trade Representative, Clayton Yeutter, and the Secretary of Commerce, Malcolm Baldrige, wrote to Chairman Rostenkowski on April 29. They noted that the Trade Subcommittee had "paid little attention" to their comments, and that its bill was objectionable. They even attached a list of fifteen features which the Administration considered "unsupportable."

Ambassador Yeutter and Secretary Baldrige urged the Chairman "to develop a bipartisan work product that will serve the long-term interests of this country".

Copies of the letters were furnished to members of the Committee. But, not only did the Committee refuse to repair the objectionable items, it added at least a dozen more amendments which were as bad as the original list.

The partisan votes which had shaped the Subcommittee's version were repeated in the full Committee. They were followed by even more partisan votes which adopted the amendments which the Administration cannot accept.

Because there was little difference between Democrat and Republican Trade statements, in either the House or the Senate, it was hoped that the process could be bipartisan. It is probably a long shot to expect bipartisan work on a bill whose manager is the Majority Leader. Nonetheless, Republicans on the Committee and in the Administration tried their best. It did not happen.

What began as a Trade Bill, hopefully to become trade law one day, instead has become a trade issue, perhaps to be important in November, but not likely to become law.

The features which worried the Administration and its Cabinet Officers are neither small, nor technical. The differences between the Committee's Bill and the Administration are profound.

Amendments were offered in Subcommittee to strike most of those features. The amendments failed. Compromise amendments were offered in full Committee to modify those features.

Here are some of the unsupportable features in the Subcommittee Bill that were preserved on the Committee Bill:

The Pease language makes "internationally recognized" worker rights actionable under Section 301. Of course, the rights cited are not internationally recognized, but this bill makes labor conditions less favorable than ours an unfair trade practice even in less developed countries. Other offensive 301 modifications require mandatory retaliation, unrealistic time deadlines, and mandatory self-initiation.

Section 201, relief where there is no unfair trade, is modified to provide for provisional relief before a finding of injury, and to establish an advisory group, consisting mainly of the affected industry, of course, to recommend industrial policy decisions to save non-competitive industries.

In the Anti Dumping and Countervailing Duty section, the natural resources portion eliminates the general availability test for resource input subsidies and establishes regional U.S. costs as one guage of foreign subsidy. In this section, too, is a feature shifting burden of proof to the importer if he has been guilty of dumping abroad, no matter what his experience in the U.S. has been.

Perhaps the worst affront to the Administration is the transfer of authority from the President to the U.S. Trade Representative in 201, 301, 337, 406, and GSP cases. And surely the most mean-spirited feature of all is the requirement for confirmation of the Chairman and Vice Chairman of the ITC. All members of the ITC are subject to confirmation anyway. The sponsor of this language merely did not like the style of the person thought to be next in line to be Chairman.

That is what the Subcommittee did. Then the full Committee added more unacceptable items like these:

The Gephardt amendment is the one the Administration finds most objectionable. It is a modified version of his original 25% surcharge. The surcharge is gone. But mandatory action against trading partners with substantial surpluses is forced after a few months of negotiations, even if the country wants to buy U.S. products which the U.S. refuses to sell.

Another objectionable Committee amendment is the Jenkins attempt, as modified by Mr. Jones, to exempt all "sensitive products" from tariff negotiations. As finally agreed to, in requiring Congressional ratification of sensitive products, the amendment pretty well withdraws more than half of imports from negotiations before they begin.

Another blockbuster is the Guarini amendment to allow U.S. companies to sue extraterritorially for damages after a dumping determination. This amendment, like much of the rest of the bill, violates our international agreements and makes U.S. companies very vulnerable under mirror laws.

Calling the roll of serious flaws in H.R. 4750 is a long and complicated exercise. Nearly every section brings a fresh case of treaty violation. Each protectionist amendment inspired others like it. The Telecommunications section spawned an intellectual property counterpart. Asphalt and cement protection stimulated a similar but separate lumber section.

One by one, nearly every industry stepped up the table for a feast. Not all were accepted, but most were. Pork, Casein, ethanol and metallurgical coal were successful. Surprisingly, oil was not able to get its import fee, but steel and textiles got most of what they sought.

Metallurgical coal is a good example. The Japanese are buying less from us because we restricted Japanese steel imports. This bill restricts steel imports still further because the Japanese are buying less coal. Thus the cycle begins. This is the stuff of Trade Wars.

Protectionists always cry foul when the memory of Smoot-Hawley is invoked. Foul or not, the parade of protection in the

Ways and Means Committee must have resembled the way the Smoot-Hawley tariff was put together.

We believe that this bill, if enacted, will have serious deleterious effects on U.S. exports and on our overall economy. First, and worst, all the treaty violations it mandates will cause retaliation against American exports. That, in turn will put many of the 3¾ million jobs (2 million of them in manufacturing) which are dependent on manufacturing exports in jeopardy.

Consumer costs will increase as protection raises the cost of both domestic and imported products in the U.S. marketplace. Just as the cost of automobiles to American buyers soared when restraints were put in place, so the cost of products protected in this bill will rise as well.

Finally, the Bill dims any substantial chance to achieve the goals enumerated for GATT improvement. Other GATT members across the world have already indicated that they would like to improve the GATT, but will not be anxious to make rules changes if the U.S. is already flaunting the present rules. It will take a miraculous salesman, indeed, to sell the GATT contracting parties to follow our lead at a time when we are thumbing our nose at the GATT.

Like the Congress, U.S. business and industry wanted to reform the trade laws, and thought it could be done. Along the way, many business associations were soured by the process. The groups who opposed the bill most vociferously are:

Chamber of Commerce
Farm Bureau
Business Roundtable
American Electronics Association
Promote American Trade (PAT)
CBEMA
Electronics Industries
Wheatgrowers
Grange
American Soybean Association
ECAT
American Association of Exporters and Importers
Pro Trade Group

Regrettably, the Committee has given us an issue instead of a bill. Perhaps, after all the committees' bills are joined by the manager, the Majority Leader, a confrontation would have been inevitable anyway. But for those companies and industries, and for those of Congress, who really wanted constructive change, H.R. 4750 is a massive disappointment.

Congress may have fun with this bill, but it is unlikely to be passed because it does not deserve to be passed. It is, in the fullest sense, a turkey.

ADDITIONAL VIEWS OF HON. JOHN J. DUNCAN

I oppose the Committee bill, with some disappointment.

I believed—and still do—that my concerns on trade are shared by many of my Democratic, as well as Republican, colleagues in the Committee. Generally, we want tougher provisions for dealing with unfair foreign practices, streamlined grievance procedures for domestic industries, and tighter enforcement of existing statutes. However, we do not want to threaten our $220 billion a year export sector or disrupt otherwise legitimate trade. Our goal is trade that is free, but also fair.

The Committee bill provides some of these things, but it also provides special interest add-ons that are too partisan for me to accept. I wanted to help produce a completely bipartisan measure, but it proved to be an impossible goal, and we Republicans were forced to go our own way.

Our substitute, described in our Minority Views, is a realistic compromise—an effective meeting ground for the many different opinions on trade reform represented in our Committee and in the House. It combines what I consider the best elements of the Committee product and the bill introduced earlier by the Republican Leader, Mr. Michel of Illinois. It removes the most egregious provisions that have been adopted here—that are so clearly not wanted by business and agriculture and, to some extent, the Administration. It is consistent with our international obligations and would enable us to continue working our way out of a bad trade situation.

Signs are growing that the situation is improving rapidly. The declining value of the dollar, with the monetary commitments recently agreed to at the Tokyo Summit, will continue to stabilize currencies, improve U.S. export performance and dampen rapid import growth. This is what U.S. industry has been waiting for, and we should not disrupt these improvements in our economy by jumping on a jerry-built bandwagon and inviting retaliation. After all, export enterprises make up more than 20% of U.S. production and employ about 4 million Americans in both agriculture and manufacturing.

I believe the Substitute combines tough improvements in existing law with commitments to fair trade and continued multilateral negotiations to enhance our interests for many years to come. It merits consideration; we strongly hope it draws enough support.

JOHN J. DUNCAN.

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